THE

MADRAS REVENUE REGISTER.

No. 5.] MADRAS:—MONDAY, MAY 16, 1870. [VOL. IV.

FISCAL SCIENCE AND THE INCOME TAX.

As a fitting supplement to our leading article, in our last impression, on the views entertained by the present Government of Madras in respect to the land assessment of this Presidency, we reproduce in our present impression a very able paper on Fiscal Science, which was originally delivered as a lecture in the Town Hall at Bombay by Mr. Robert Knight, F. S. S., and editor of the *Indian Economist*. Mr. Knight has treated his subject in a very interesting and popular style, but at the same time it appears to us that he has dealt with it in an equally sound and observant spirit; and there can be no question that his views of Financial Economy, as applicable to India, are more entitled to respect than the second-hand English theories of the amateur statesman, who has aroused a spirit of antagonism to centralization in every part of this great empire. Every ordinarily informed mind must be aware that the circumstances of the two countries, England and Hindostan, are widely different. Whether rightly, or wrongly, the Sovereign in England had long parted with his territorial interests, and the ministers of the Crown, therefore, are compelled to raise the necessary funds for administering the government of the kingdom by what is called indirect taxation, the proceeds of which are collected through the Custom-House and Excise Office, the Postal Department, and the Stamp Office. The theory of this indirect taxation is that it is levied on the luxuries, not the necessaries, of life; but, though it is called indirect taxation, it reaches the masses of the people in England. The tastes of her people are very different from the simple habits of the half-clothed people of this country; and what are luxuries in name, such as tea, coffee, sugar, and manufactured goods, are absolutely so many indispensable necessities to the English community at large—each lightly taxed in itself, but, from the quantities consumed by an immense population, producing in the end an enormous out-turn. Then again, in the language of Mr. Knight, "England is a rich manufacturing country, a country of great landlords, merchants, manufacturers, bankers, lawyers, men of science, wealthy farmers, rich tradesmen, comfortable middle classes, and high-wage earning workmen;" whereas "India is a purely agricultural country, a country of peasant farmers, and petty shop-keepers," whose "vocation is to till the land; to produce food and the raw material of clothing for other lands as well as for herself." Here no indirect taxation can ever be productive, for it cannot reach the masses; and with the sole exception in the case of salt, which is con-

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sumed by the poorest as well as the richest man, political economy has not been so perverted even in India as to levy imposts on the simple necessities of life. With these striking differences in the circumstances and people of the two countries, Mr. Knight is not singular in his opinion that to arrange for recouping the treasury of the State by an income tax is a most unstatesman-like measure. Such a tax can never reach the masses; and, for the comparatively small amount that it realizes, it is unworthy any enlightened Government to cause, by its unjustifiable imposition, all the annoyance and disgust it does to the only few who fall under its operation. Mr. Knight is, therefore, perfectly right and sound in his proposition that the legitimate source of revenue to the State is the *land*, which, properly handled, is equal to the demands of even an imperial expenditure. Happily for us, we succeeded to a rich heritage when we came into possession of this country. The land tax was no novel institution. It did not even owe its origin, as Mr. Knight implies, to our Mahomedan predecessors, but it was an accepted doctrine of the more primitive and far simpler school of the Hindoos. What does Manu, the fountain of all Hindoo law, say? In the seventh chapter of his famous Institutes, treating of government and public law, this great legislator lays down his precepts on the duties of the sovereign in the following characteristic language—"As the leech, the sucking calf, and the bee, take their natural food by little and little, thus must a king draw from his dominions an annual revenue. Of cattle, of gems, of gold and silver, added each year to the capital stock, a fiftieth part may be taken by the king; *of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labour necessary to cultivate it.* He may also take a sixth part of the clear annual increase of trees, flesh, meat, honey, clarified butter, perfumes, medical substances, liquids, flowers, roots, and fruit. Let him not cut up his own root by taking no revenue, nor the root of other men by excess of covetousness; for, by cutting up his own root and theirs, he makes both himself and them wretched." Here, then, we have Hindoo warrant for the Sovereign taking, not a mere quit-rent from the land, but an actual *share of the produce*, either a twelfth, an eighth, or a sixth, *according to the difference of the soil, and the labour necessary to cultivate it.* These small proportions for the support of the State were fixed, it should be borne in mind, at a time when the cost of government must have been very small compared with what it is in modern days; at a time when the form of government was quite patriarchal in its constitution; at a time when the monarch himself dispensed justice with his own hands between subject and subject, as we might well fancy would be the case about a thousand years before the Christian era, when tradition informs us Manu lived and wrote. Be the proportions what they might be, it is clear that the principle was laid down and thoroughly well understood from the earliest ages in India, that the State was entitled to share in the produce of the soil according to its capability. What might have been the real share of the produce which the Hindoo rajahs took subsequent to the days of Manu, we are not aware; it is certain that our immediate predecessors, the Mahomedans, raised the share of the State to half the net produce; and, when we came into possession, we found the people both accustomed to pay this share, and quite content and able to pay it. The British Government were not, therefore, called upon to relinquish this heritage to which they had succeeded, as they did wholesale in Bengal, where they parcelled out the land among a number of landlords, reserving for the purposes of

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the State a small quit-rent, absurdly insignificant compared with the immense profits derived by these middle-men from the actual cultivators of the soil. How absurdly insignificant this might be we may gather from one instance ready to hand. We refer to the Privy Council case from Bengal, reported at page 117 of our last impression, where it will be seen that a whole taluk—not a mere village—composing an extensive and most valuable property had been bestowed on one Ramdhone Chatterjee and his heirs for ever at a fixed rent of 349 sicca rupees a year! Well may Mr. Knight, in his strong and indignant language, denounce this system as tampering with the national property. And this tampering with the national property is the more wicked and inexcusable, when it is considered that a Government is established, not for the advantage of the few, but for the good of the commonwealth—not that a few men should get rich and grow fat in idleness, while the public deficit is sought to be made up by direct taxation of the enterprize and industry of the community. But while Mr. Knight is properly indignant with Bengal policy, he unjustly includes our Madras system in his sweeping remarks. He says in one place, "Again, the modern land settlements of the Madras Presidency are being made for thirty years upon the assumption that the price of paddy is, and will remain, £2-0-7 per ton, whereas the real price for years past has been two or three times that rate. Now, it is these proceedings which are the cause of all our embarrassment, and of the necessity of this new income tax. We are fixing the land revenue for long periods of time at these absurd rates, while we are committed to an indefinite outlay upon public works for improving the value of the land. Our finance is in the hands of men who are simply blind." In another place he remarks, "In Bengal, Behar, Orissa, a part of the North-West, and of Madras, the State inheritance is wholly lost; and the sacrifice would have been universal, I believe, but for my own personal, persistent, and passionate efforts." And yet further on he observes, "Throughout Bengal, Behar, Orissa, a part of the North-West Provinces, and Madras, as I have said, we have divested ourselves of all right whatever to share in the future value of the soil." These were startling words to us. Putting aside the question how far Mr. Knight's very modern personal and passionate efforts might have influenced Madras administrators ever since the British assumption of the country, we were fondly indulging, and, in spite of Mr. Knight's endeavour to remove our misconception, are still indulging the very foolish delusion that our Revenue system is a model system; that, in fact, the Madras revenue system and a ryotwari settlement were convertible terms; in other words, that it is our system *par excellence* which makes the Government revenue perfectly elastic, expansive, and coextensive, with increase of cultivation and increase of prices. That Mr. Knight is utterly wrong in charging the Madras Government with any tampering with the national heritage, we have only to refer to the recent exhaustive discussion to which we gave publicity in our last impression on revision of assessment in this Presidency. It will there be seen that Lord Napier and his councillors have laid down certain fixed principles for conducting this settlement with the ryot. In the first place, they declare that the State is entitled to *half* the net produce; in the next, that, considering how prices of grain have doubled and trebled since the conversion of the Government moiety into money had been determined in years past, the commutation rates now payable are to be calculated on the prices of the last twenty years; in the third place, that these ascertained money

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payments, for the purpose of avoiding annoyance both to Government and people, are to last for thirty years, when the rates are to be open to revision according to later standards of price; and fourthly, that all waste land brought under the plough is as heretofore to pay its quota to the great land revenue of the country. What can be a fairer or more equitable adjustment of the rights of the cultivator on the one hand and the claims of the State on the other? There is here no tampering with the national property, no divesting ourselves for ever of all right to share in the future value of the soil. On the contrary, the policy of our Madras statesmen preserves the just half to which each is entitled; for, while the State derives an increasing revenue corresponding with increase of prices and extension of cultivation, the husbandman's moiety of the produce is improved and secured to him in exactly the same proportion and under similar conditions.

Mr. Knight says that an income tax is simply a fraud on the people of Madras, Burmah, Bombay, and other provinces, all which are already contributing more than their proper share to the imperial treasury, and that we are called upon to pay this tax to make up a deficit brought about by official tampering with the land revenue in other provinces of the country. Certainly he gives a remarkable, and almost incredible, instance of this official tampering with the national heritage in the case of the settlement of Raepore in the Central Provinces. If his figures are correct, there are 1,866,924 acres of land actually under cultivation in Raepore, the total value of the harvests gathered from which is calculated at 163½ lacs of rupees a year; and yet, for the next twenty years, the Government share of this enormous produce is not to be more than 6½ lacs of rupees, or about one-twenty-seventh the annual produce of the land! Even in the days of the simple State machinery of Manu, the smallest share of the Sovereign in the produce of the soil was declared to be a *twelfth*. Here in Raepore, which is said to be "a land of plenty, where want is unknown, and the rainfall never fails," the share of the State in these advanced and costly days is settled nominally at one *twenty-seventh*; but, if Mr. Knight is right, "the assessment in point of fact is not *one-fiftieth* of the harvest." In the telling words of the lecturer, "the single harvest gathered in Raepore in the last twelve months will suffice to pay the whole *twenty* years assessment *three times over!*" Can anything be more absurd? Is it for monstrous blundering of this kind that we, who have had no share in it, must pay the penalty? There is no doubt, considering the adaptation of our system of revenue to the wants of the day, that an income tax is utterly uncalled for in this Presidency. If it cannot reach more than one in a thousand, what good does it obtain for the State in return for all the worry and annoyance that it causes to the few who fall victims to its operation? That an income tax, odious in all its features, is unsuited to this country as a means of raising revenue, cannot be denied. It is true that a tax of the kind was collected under the native Governments under the designation of *Veesbady;* but then, it was confined to those only who were engaged in commercial pursuits. The great zemindars and salaried officers of the State were exempted from its operation; and the collections from this source were consequently small, though the officers employed in collecting it possessed a most fruitful source of swelling their illicit gains. This tax, long ago abolished, is now sought to be re-imposed by the British Government under the designation of an Income tax, and every class of Her Majesty's subjects is required to pay it, provided the income of the individual does not fall below a certain

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standard. What is the result? The result has been simply unsatisfactory, since the bulk of the receipts from this source consists chiefly of stoppages out of the guaranteed allowances to Government officers and servants of other public establishments, and a certain percentage on the estimated incomes of well-known merchants, bankers, and lawyers. Then, to take another view of this tax—it may possibly be a low one—the agency employed in its collection is certainly not what it ought to be, while the Income Tax Act is a powerful engine in its hands for oppressing the people. The result often is a compromise between tax-payer and tax-gatherer to the manifest prejudice of the State. This view of it alone is sufficient to condemn the income tax. The true remedy is to alter the revenue system, where needed, in districts in which the Government have not irrevocably pledged themselves. It may be a very difficult question whether the present Government are still bound by the policy of Lord Cornwallis in Bengal. Considering that Governments exists for the good of the commonwealth, and not for the advantage of a favoured few, it may be a fit subject for discussion whether one generation is justified in restricting for ever the action of the next. It is a great question, but a question entirely beyond the range of our capacity, whether the permanent settlement system of Bengal may not be open to revision under the present circumstances of the day. However foolish the policy of Lord Cornwallis, we could not advocate a withdrawal from an act of the State which deliberately divested itself of its great landlord rights and solemnly conferred them upon certain individuals and their heirs for ever, subject to a certain proportionate payment to the State. But this transfer of rights must have been based upon a certain principle of calculation on an existing state of things, and governed by an equitable division of profit between the donor and the donee. If circumstances have disturbed this proportion, and these circumstances have been brought about, not by the action of the grantee, but by the direct action of the State, or the accidents of the period in which we live, would it be unfair in the State to require that the original equitable division of profit be restored, by proportionately increasing the contribution calculated in the exigencies of those days to be sufficient towards defraying the cost of maintaining public order and the public peace? If such a discussion is impossible in connection with the permanent settlement system of Bengal, surely the Government of India have it in their power to establish proper systems of land revenue in districts such as Raepore, where we apprehend no pledges have been given to individuals or the people at large. May not our enlightened Government draw from the stores of wisdom embodied in the few simple words we have quoted from the famous Hindoo Sage? "Let him not cut up his own root by taking no revenue, nor the root of other men by excess of covetousness; for, by cutting up his own root and theirs, he makes both himself and them wretched." To take but one-fiftieth of the produce of a land of plenty is to cut up the root of the State; while to impose an income tax and an ugly tax on justice in Madras, which already contributes more than its proper share to the imperial treasury, is simply to cut up the root of other men, and to make both State and people wretched and discontented.

OFFICIAL RECORDS.

We have received from the Revenue Secretary to Government a valuable selection of papers on the Settlement of the Chellumbrum and Manargoody Taluks of South Arcot, and a very handsomely illustrated edition of the history of the Seven

Pagodas, to both of which we shall endeavour to do justice as soon as we can command the necessary leisure.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND HOLLOWAY, J.

Zemindary—Lease—Sub-lease—

In a suit by a Zemindar (lessor) against the lessee to set aside the sub-lease granted by the latter to a third party, and where the contract of lease contained no stipulation against any transfer of interest—

HELD *that the right to assign, or sub-let, is an established incident of a tenancy at a rent for a determinate period, when the contract of letting is silent on the subject; that the terms of the lease in question did not evidence an agreement that the tenancy should not be assigned by the original lessee, or his heir by will succeeding him.*

SEMBLE.—*There is no distinction, as to the rights incident to a temporary tenancy, between the lessee of an entire zemindary and the lessee of a portion of it, or of other lands.*

R. A. No. 70 of 1869.

S. M. R. Ranee Kathama Natchiar *v.* Robert Fischer, Esq., and another.

THE plaintiff in this suit was the Ranee of the Shevagungah Zemindary (Madura district). She had engaged for many years in litigation, seeking to recover possession of her zemindary, which was in the hands of a collateral member of the family. At length, on the 8th December 1863, owing in a great measure to the continued exertions of Mr. G. F. Fischer, the father of the first defendant, a decree was passed in the Privy Council adjudging to her the zemindary in question. Mr. Fischer was for many years her friend, counsellor, and adviser; and, wishing to make a suitable recompense to the man to whom she was so much indebted, she executed to him on the 22nd January 1864 a lease of the said zemindary for ten years subject to certain conditions, and confirmed the same after his death to his son (the first defendant) by a kararnamah executed by her on the 5th July 1867. The first defendant came into the possession of the zemindary in virtue of his father's will, after which, on the 8th December 1868, he executed a deed of assignment of the unexpired portion of his lease to one Vencatasawmi Naick, the second defendant, and made it over to him without the consent, and in spite of the express remonstrances, of the plaintiff. The plaintiff brought this suit to set aside the above assignment. She stated that the late Mr. G. F. Fischer, first defendant's father, conducted for many years on her behalf the suit in which she ultimately recovered her zemindary, and was for many years her legal adviser; that, in consideration of his great services to her, she executed the lease of the zemindary to him for ten years at the yearly rent of one lac of rupees; that the said lease was purely personal between her and the said Mr. G. F. Fischer, contained no power to sub-lease the zemindary, and was not expressed to be made in favour of his assignees; that Mr. Fischer, knowing well that the lease was a personal benefit to him not transferable without her consent, requested her shortly before his death to be allowed to substitute his son (the first defendant) in his stead for any such portion of the term of the lease as might remain at his death, and represented to her that he had bequeathed by his will such unexpired portion to his son (first defendant); that she consented to his request, and, in furtherance of that consent, she and Mr. Fischer entered into an agreement, (kararnamah of the 5th July 1867,) whereby she expressed her willingness to recognize in his (Mr. Fischer's) stead his son, first defendant, agreeably to the will in his favour, and under the terms of the covenant in the said agreement and the aforesaid lease; that, after Mr. Fischer's death, she recognized his son, the first defendant, agreeably to his will, as having and enjoying all his father's interests in the unexpired portion of the lease; and that, under the circumstances above stated, the assignment by the first defendant to the second defendant of all his right, title, and interest in the unexpired portion of the lease, without her consent, and in direct opposition to her wishes, was altogether void, and of no effect. She further added that the assignment to a third party would relieve the first defendant from his responsibility of making her the stipulated annual payment of a lac of rupees, whereas she could not compel the second defendant to make that payment, as she was no party to the transfer, and as the relationship of lessor and lessee did not exist between her and him. The first defendant contended that the lease was not purely personal, but was expressed to be made between the plaintiff and her heirs on the one part, and the first defendant's father and his heirs by will on the other part; that the lease contained no covenant or stipulation against sub-letting, or assigning the whole or any part of the interest of the first defendant's father in the term of the lease; that his father did not request the plaintiff at any time to be allowed to substitute him (first defendant) in his stead as lessee of the zemin-

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dary; and that he (Mr. Robert Fischer) did not recognize any right in the plaintiff to give her consent to any transfer of the lease made in his favour; that he (first defendant) did not succeed to the unexpired portion of the lease by virtue of the plaintiff's recognition of him as heir of Mr. G. F. Fischer, but, on the contrary, he succeeded to it under his father's will; that the agreement of the 5th July 1867 contained not only a recognition of the first defendant's right as Mr. G. F. Fischer's heir, but also a ratification of the original lease; and that he had a legal right to make the assignment to any person he pleased, and that, therefore, his assignment to the second defendant was perfectly valid in law and binding on the plaintiff; further, that he has not repudiated, and does not repudiate, his liability to pay the rent to the plaintiff during the existence of the term. The Civil Judge, in an elaborate judgment, found that the assignment was invalid, and, as such, must be cancelled. The following is extracted from his judgment:—"To sum up; the conclusion I have arrived at upon the evidence is that Robert Fischer has no larger powers than his father had; that the idea of alienating or parting with the zemindary during the existence of the lease never entered into the conception of either the elder Fischer or the plaintiff; that the absence of any negative stipulation does not affect the construction of the document, as gathered from the language used and the obligations that were imposed on both parties; and, finally, that the burden of proof rests with the defendants to show that the plaintiff was improperly informed of what might be the possible legal consequences arising to herself and the elder Fischer by the omission of this clause—a burden from which, it is clear they have not relieved themselves." The second defendant (Vencatasawmi Naick, the sub-lessee) appealed to the High Court. Gould, O'Sullivan, and Ram Row appeared for the appellants, and the Advocate-General and Mr. Mayne for the respondent. Gould, for the appellants, cited numerous authorities to show the law of the case; but, as the law was not disputed by the learned Advocate-General, the whole point turned upon the construction of the lease and the kararnamah. The High Court delivered the following

Judgment:—4th March 1870.

Per Scotland, C. J.—This is a suit to invalidate an assignment by the first defendant to the second defendant of the unexpired term of a lease for the term of ten years of the zemindary of Shevagungah, granted by the plaintiff to the father of the first defendant, on the ground that the contract of the parties is a personal one for a tenancy by the first defendant's father and the first defendant as his recognized heir, and that the unexpired term was, therefore, not assignable without the consent of the plaintiff. The lower Court has upheld that ground and decreed that the assignment is invalid; and, the decree having been appealed from by the second defendant, we have now to determine whether it can be sustained.

There is no question as to the general rule of law which must govern our decision.

The right to assign or sub-let is, I apprehend, as well established an incident of a tenancy at a rent for a determinate period, when the contract of letting is silent on the subject, as it is of an estate for life or estate of inheritance. In order, therefore, to invalidate the assignment in the present case, it is necessary that one of two grounds should be established—either that the nature of the conditions attached to a zemindary estate are so inconsistent with an assignment of the entire estate without the Zemindar's consent, as to necessitate our holding that a lease of it is an exception to the general rule; or that the terms of the original lease import, when properly construed, an agreement between the parties that the tenancy was not assignable.

Now, as respects the former ground, nothing of force was advanced in support of it at the bar, although the Court in the course of the argument directed the attention of the learned counsel for the respondent to the matter; and I am not aware of anything in the nature of the tenure by which zemindaries are held to require that a distinction should be made as to the rights incident to a temporary tenancy between the lessee of an entire zemindary and the lessee of a portion of it or of other lands.

Then, as to the point of the construction of the lease. The whole ground of the judgment of the lower Court, and of the contention in support of it, is that the language of the lease evidences a contract of tenancy purely personal to the first defendant's father and the first defendant himself, and so excludes the right to assign it to another. This interpretation is, in my opinion, clearly unsustainable. There are, no doubt, terms imposing upon the lessee, obligations which he is personally bound to fulfil and cannot relieve himself of by the simple act of making an assignment. But that is commonly so in the cases of leases, and it does not appear to be the necessary effect of the assignment in this case to interpose any obstacle in the way of the lessee's due fulfilment of his obligations. Beyond those obligations, stress was laid by the Advocate-General on behalf of the Ranee only upon the stipulation in the lease, *And we have agreed, I for myself and my heirs, and you for yourself and your heirs as per your will, to abide by the conditions of this deed.* He urged that, when effect was given to the further stipulation in the agreement of the 5th July 1867, that the Ranee should, according to the will of the lessee, take on his death his son, the first defendant, as the succeeding lessee for the remaining term of the lease, it

was apparent that the parties intended a strictly personal tenancy. It appears to me that the words of the lease import no more than the passing of the rights and obligations attaching to the lessee by succession to any person as heir whom the lessee might by will declare to be his heir; and I think the stipulation in the agreement of the 5th July 1867 was entered into simply for the purpose of pledging the Ranee beforehand to the recognition of the first defendant as the heir by will to succeed to the unexpired term of the tenancy. In my view, therefore, neither stipulation tends to show an agreement for a personal tenancy; and, upon the whole, I entertain a clear opinion that by the lease a tenancy for the term of ten years certain was granted to the original lessee and to his heirs by will on his death before the expiration of the term, and that there is nothing in the lease evidencing an agreement that the tenancy should not be assigned by the original lessee or his heir by will succeeding him, and consequently that the decree should be reversed with costs.

Per Holloway, J.—I am of opinion that the decree of the Civil Judge must be reversed. It in effect declares that the lessee of the plaintiff is legally incapable of transferring to another the benefits taken by himself under that lease. That without the assent of the plaintiff he can rid himself of his obligations is not contended. It is admitted that by the law of England there could be no doubt of the assignability of this lease. That proposition is indeed so plain that it requires no authority. In all countries the necessities of human dealing have led to a considerable relaxation of what was originally the rule that a man could not transfer an obligation. Various systems, and, as in England, two systems in the same country have relaxed this proposition in different degrees. It is quite clear that the Courts of this country have carried the relaxation as far as it has been carried anywhere, and in so doing they have merely added the force of judicial decision to what the people had by practice recognized as law. As to rights in land, the practice of assigning interests the most infinitesimal is fully established, and such assignments are daily before the Courts, and their validity is never questioned. So far, therefore, as the law here differs from the law of England, the difference certainly seems to be in favour of greater freedom, and certainly no evidence has been adduced and no principle of law referred to which should compel us to import by custom into this transaction a restriction not expressed in the words of the contract. In like manner no principles have been shown which might require us to put upon the words used other than their literal construction. It is quite possible for such to exist, but none have been shown.

Then, is there anything in these words to show a mere personal covenant with the Fischers? The original lease is to Fischer and to any one whom he may name by will. Then the document of the 5th July 1867 agrees to take Fischer the younger *according to your will* in place of the father. Fischer the elder had by that time determined his will, and the specific mention of Robert Fischer seems only an act of prudence intended to prevent disputes after his death. In this mention I can see nothing to show that the agreement was purely personal. The mention of the same person in the document constituting the agency seems to me not to assist the argument. Agency is a purely personal contract, and, if the plaintiff intended him to succeed his father, it was natural that she should say so. Looking again at the duties to be performed, there is nothing to lead to the presumption that the rights were not assignable. This, however, bears only on the question of construction, for the appellant is not contending that he is relieved from any one of the covenants in his lease. I confess that the case appears to me a very plain one, and I think that the decree should be reversed with costs.

Scotland, C. J., and Innes, J.

Attachment of land for arrears—Previous sale to another—Rent Recovery Act—

Where A conditionally sold his land to B, and the Collector subsequently attached it for arrears of revenue due by A, B not giving notice, nor objecting, under Section 35, *Act II of* 1864—

Held, *that the arrears were a* bonâ fide *first charge on the land, and that B ought to have proceeded under Act II of* 1864 *to obtain its release.*

R. A. No. 107 of 1869.

Gajjarapu Anandu *v.* Vadrevu Bapurazu and two others.

This was a suit brought in the Civil Court of Rajahmundry to procure the release from attachment of 8 acres and 92 cents. of jiroyetti land in Peddamalla, which the first defendant had conditionally sold to the plaintiff, and which the Tahsildar, by order of the Collector, had attached in satisfaction of arrears of revenue due from the first defendant. The first defendant permitted the case to be tried *ex parte.* The second defendant (the Collector) pleaded that the land having been registered in the first defendant's name was attached and sold in due course of law in satisfaction of arrears of revenue which he owed to Government. The plaintiff never gave notice of his claim, nor objected to the attachment and sale of the land

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under Sections 35 and 37, Act II of 1864, (Madras.) As the plaintiff's pleader admitted that the plaintiff did not proceed in the manner prescribed by the "Arrears of Revenue Recovery Act," Mr. Morris, the Civil Judge, held that the plaintiff had no right to bring the present suit. He was not the owner of the land, and, had he been a *bonâ fide* mortgagee, he should have proceeded as prescribed by the law. He, therefore, dismissed the suit with costs. The plaintiff appealed to the High Court through his counsel, Mr. Sloan. The High Court delivered the following

Judgment:—1*st April* 1870.

We see no ground for interfering with the decree of the lower Court. The action was altogether groundless. The arrears of revenue, for which the land was attached by the Collector, were a *bonâ fide* first charge on the land, and the plaintiff could have obtained its release in the manner provided by Section 35 of Madras Act II of 1864. This appeal must be dismissed with costs.

HIGH COURT—CALCUTTA.

BAYLEY AND HOBHOUSE, J. J.

Mangina Khatun and others, (plaintiffs,) *v.* the Collector of Jessore, on behalf of Government and others, (defendants.)*

Act XI of 1859—*Sale for arrears of Government revenue.*

Where there has been a sale under Act XI of 1859 *for arrears of revenue but it is found that no revenue is actually due to Government, the sale must be set aside as not coming within the provisions of the Act.*

Baboo *Girija Sankar Mozoomdar* for appellants.

Baboo *Jaggada Nand Mookerjee* for Government, respondents; and *Bangshi Dhur Sen,* for Giridhur Sen, respondent.

BAYLEY, J.—I am of opinion that this case must be remanded to the lower Appellate Court to try, on the evidence on the record whether there were any arrears of Government revenue due to the plaintiffs at sunset on the last day of payment.

The plaintiffs sued for the recovery of possession of a certain taluk, and for the reversal of a sale held for the realization of arrears of Government revenue. The plaint stated that there was a sum of Rupees 14 and odd annas in deposit with the Collector of Fureedpore in the plaintiffs' favour; that the sum alleged to have been due to them (plaintiffs) on account of arrears of Government revenue was Rupees 10 and odd annas, and thus the plaint, though it did not make any distinct allegation in so many express words that there were no arrears of revenue due by the plaintiffs, did, in fact, aver that, if the above sum of Rupees 14 odd had been duly credited in the plaintiffs' favour, it would have been more than sufficient to meet the arrears of revenue, and thus that there were none. There were other averments in the plaint as to irregularities in the notice and such like, but for the purpose of our present judgment it is not necessary to make any further specific observation as to them.

The plea of the defendants, the Collector of Jessore and the auction-purchasers, was that there were certain arrears due by the plaintiffs; that, as under Section 25, Act XI of 1859, no appeal was made by the plaintiffs against the sale, so, with reference to the provisions of Section 33 of that Act, plaintiffs were not in a position to contest the legality of the sale before any Court of justice.

Both the lower Courts have held that, as in this case no appeal was made to the Commissioner under the provisions of Section 25, Act XI of 1859, within fifteen days of the sale, so the provisions of Section 33 of that Act barred the jurisdiction of the Civil Courts to give the plaintiffs any redress, and accordingly dismissed the plaintiffs' suit.

The plaintiffs' appeal specially to this Court and the plea taken is that, as there were no arrears of revenue due, the provisions of Act XI of 1859 do not in any way apply to this case, and consequently the lower Appellate Court's refusing jurisdiction with reference to the provisions of that Act was erroneous in law.

There is a Full Bench decision in the case of *Baijnath Sha* v. *Lala Sital Prasad,** where, though not on a precisely similar state of facts, the principle has been laid down that, where there is no evidence of any arrears of Government revenue being due, the provisions of Act XI of 1859 do not apply, as the sale cannot be said to have taken place under the provisions of that Act.

We fully concur in the principle laid down in that decision, that where there are no arrears of Government revenue due it cannot be said that an Act relating to sales for arrears of Government revenue would apply. This is also the view which we understand has been taken by Kemp and Markby, J. J., in *Sreemunt Lall Ghose* v. *Shama Soondaree Dossee.*† The whole question, therefore, before us is as to whether there were any arrears of revenue due to the plaintiffs by the Government; and, in order to a finding on this point, we think that the ordinary and proper course would be to remand the case to the lower Appellate Court. But before we do this we think it necessary to see whether there is any evidence on the record on the part of the plaintiffs which can form the basis of a judicial finding on this point.

Now the plaintiffs have, in the first place, filed certain accounts, which are not attested either upon their own oath or upon that of any witnesses. These, therefore, can be no legal evidence in their favour.

* Special Appeal, No. 1,268, of 1869, from a decree of the Judge of Small Cause Court with powers of Sub-Judge of Fureedpore, in Zillah Dacca, dated the 13th March 1869, affirming a decree of the Munsiff of that district, dated the 21st November 1868.

* 2 B. L. R., F. B., 1. † 12 W. R., 276.

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There are, then, certain challans of the Collectorate filed by the plaintiffs, purporting to shew that the annual jumma payable and paid for a certain number of years was Rupees 89-1-1, and on a calculation made upon this basis it would appear that the challans of remittances made by the plaintiffs would be some evidence in the plaintiffs' favour, in order to shew that the demand for Government revenue had been, in many instances, satisfied on the calculation adopted by plaintiff on the present occasion. There is, then, also an allegation on the part of the plaintiffs that the practice would be for the money to be deposited with the Collector of Fureedpore, who would make remittances to the Collector of Jessore.

On the other hand it is alleged by the defendants that the plaintiffs' plea simply was that owing to the fault of the patnidars, the sums had not been paid in due time. On the whole, however, I think there is evidence upon which the lower Appellate Court could come to a finding whether arrears of revenue existed or not, and, if that is so, whether the provisions of Act XI of 1859 would be applicable or not.

The case is, therefore, remanded to the lower Appellate Court to find, upon the evidence on the record and on a comparison of the accounts, whether or not there was a balance of Rupees 10 and odd annas due from the plaintiffs to the Government on account of revenue, for which their estates would be legally liable to sale under Act XI of 1859. If it is found that there was no balance due to Government, the lower Appellate Court will consider that the provisions of Act XI of 1859 do not apply to this case, and will take jurisdiction and set aside the sale as not made under that law. If, on the other hand, the Court finds that there was a balance due to the plaintiffs by Government on account of revenue, it will consider that the provisions of Act XI do apply; and in that case it would be right in refusing to take cognizance of the plaintiffs' suit, or give them any relief, on the ground that no appeal had been made to the Commissioner within the fifteen days absolutely prescribed by the law. The costs of this appeal will follow the result.

Hobhouse, J.—I am of the same opinion. I confess I am not without doubts on the subject; but I think, on the whole, that we ought to remand this case to be tried on the issue which Mr. Justice Bayley has laid down. It seems to me that it is a condition precedent to the exercise of any authority by the Collector under Act XI of 1859, and it may be said a condition precedent to the assumption by him of any power under that Act, that there should be an area of revenue due before he can institute proceedings under that Act. Sections 2, 3, and 5 of that Act read together seem to me to be conclusive on this point. The doubt which I have is with reference to the wording of Section 25, which would seem to say that any irregularity committed by the Collector *must* be the subject of an appeal to the Commissioner, and that, unless such an appeal be made within a certain time, the Civil Courts are barred from jurisdiction by the provisions of Section 33. On the whole, however, I am inclined to think that the words in Section 25 cannot be held to apply to anything except to proceedings legally taken under the Act, and so do not apply to that declaratory part of the Act by which jurisdiction is given to the Collector to institute any proceedings at all. The words are these:—"The Commissioner shall be competent, in every case of an "appeal so preferred, to cancel a sale which would "appear to him not to have been conducted "according to the provisions of this Act," so that the appeal would rather seem to be against the irregularity of the proceedings after the sale shall have been ordered, and would seem not to refer to the provisions in the Act which give jurisdiction to proceed to sell; and so again the provisions of Section 33 allude to the irregular conduct of the sale, and not to that part of the Act which gives jurisdiction to conduct the sale; and certainly the principle laid down in the Full Bench ruling which Mr. Justice Bayley has quoted is just as applicable as a principle to the facts before us as it was to the facts of the case before the Full Bench. When reduced to its shortest compass, the principle of the Full Bench ruling seems to me to be comprised in these words, to be found at page 71 of the judgment delivered by Mr. Justice Macpherson—"In the present case "no arrear of revenue was due, nor anything "which could legally be levied as such. Act XI "of 1859, therefore, did not apply to the case at "all, and the sale did not take place under its "provisions." If, therefore, we could say in this case that no arrear of revenue was due, we should, if we followed that ruling, be obliged to say that Act XI did not apply, and that anything done, therefore, under its provisions was null *ab initio*; and we are quite certain that at any rate we are putting a reasonable construction on the law, for, if it is found as a fact that there was no arrear of revenue due at the sunset of the last day of payment, then there should have been no sale; and if, on the other hand, it be found as a fact that there was an arrear due, then everybody will be kept in the position that he ought to hold, and the only sufferer will be the person who never ought to have brought this suit, namely, the plaintiff.

If the Judge should find an arrear of revenue to have been due he will give the plaintiff a decree, and, if not, he will dismiss his suit.—*14th August 1859.—Bengal Law Reports, Vol. III., Part XVII.*

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Cases.]

Sale of zemindari for arrears—Rights of purchaser and lessees—

On an estate being put up to sale for arrears of revenue, Government purchased it and ultimately put the respondents (descendants of the original talukdar) in possession on different settlements for three successive periods, at the end of which time they sold their zemindari rights to the appellant, subject to any rights the lessees might possess, they having meanwhile been put out of possession. They sued

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to be put back into possession, subject to any enhancement of rent by the Zemindar. The appellant contended that the sale of the estate for arrears of revenue had destroyed the title of the original owner, and that the settlement afterwards made by Government with the respondents was of the nature of a farming lease, so that Government could resume the lands, sell, or cultivate them as it pleased; and further that, if the respondents had any equity for a re-settlement, such could not be enforced in a suit under Act X of 1859.

HELD *that, whatever might have been the powers of Government, they had not annulled the tenure of the respondents before* 1842, *when Regulation XI of* 1822, *under which it might have been done, had been repealed by Act XII of* 1841; *that Government had left the talukdars in the position in which they would have been under the old law, reducing their tenure from a fixed to a variable one; that, though appellant could have sued for enhancement of rent, he could not disturb the possession of the talukdars, nor let the lands over their heads to the highest bidder; and that the suit, being one between under-tenants claiming lands of which they had been dispossessed, and the Zemindar who disputes their title to possession, was rightly brought under Clause* 6, *Section* 23, *Act X of* 1859.

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Khajah Assanoollah *v.* Obhoy Chunder Roy and others, from the High Court of Judicature at Fort William in Bengal delivered 21st February 1870.

Present:

LORD WESTBURY.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THE appellant is the present owner of the zemindary right in that portion of an extensive estate situate in Zillah Tipperah, and called Buldakhal, which includes the lands and villages that form, or once formed, a taluk known as Taluk Poorba Auttee. This taluk was created subsequently to the Perpetual Settlement, and in the year 1803, by Mirza Hosein Ali, the then zemindar of that portion of the estate, in favour of Bishonath Roy, the father or ancestor of the respondents.

It was an hereditary transferable taluk, to be held at a fixed perpetual rent of 1,550 rupees and $4\frac{1}{2}$ annas. The estate of Buldakhal, at the date of the revenue sales afterwards mentioned, seems to have comprehended many other taluks, of which some had existed at the date of the Decennial Settlement; but the greater part had been created subsequently to the permanent settlement of the mehauls in which they were situated.

In January 1835 an 8-anna share, and in May 1836 a 2-anna share, of the Buldakhal Estate (the latter being the portion which included the taluk in question) were sold for arrears of Government revenue; and in both instances the Government itself became the purchaser, and thus acquired all those rights which the Sale Law then in force gave to a purchaser of a zemindary sold for arrears of revenue.

In the exercise of those rights it proceeded to make a re-settlement of the estate, and proceedings, extending over a considerable period of time, were had against the talukdars, including Bishonath Roy or his representatives. These will hereafter be more particularly considered. At present it is sufficient to state that several settlements were ultimately made with the respondent, Obhoy Chunder Roy, on behalf of himself and the other respondents, in respect of the lands comprised in Taluk Poorba Auttee, namely, a settlement for one year in August 1841; a settlement for twenty years in August 1842; and a second settlement for one year in April 1862. On the expiration of this third settlement the Government Collector gave notice to the ryots and cultivators of the lands comprised in the taluk not to pay their rents to any person except the Government; and on the 23rd November 1863, the zemindary rights of the Government in the lands were put up for sale, subject to the rights (if any) of the talukdars, and were purchased by the appellant.

In March 1864 the respondents commenced the suit, out of which this appeal arises, against the appellant. It was founded on their alleged dispossession from their talukdary rights in the lands, and was brought under the 6th Clause of the 23rd Section of Act X of 1859 before the Collector. That officer, by his decree dated the 7th June 1864, dismissed the suit; but his decision was reversed by the High Court on the 23rd March 1865, and the appeal is against the latter decree and a subsequent order rejecting an application for review of judgment.

The contention between the parties is shortly this. The respondents assert that their taluk is still a subsisting tenure, and that, although it is now, as they admit, subject to enhancement of rent by means of proceedings properly taken by the zemindar for that purpose, it gives them a right of possession or occupancy which he is not entitled to disturb. The appellant, on

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the other hand, insists that the Government, after the sale for arrears of revenue, and in the exercise of its powers as purchaser, effectually cancelled and destroyed the tenure created in favour of Bishonath; that the settlements which it afterwards made with Obhoy Chunder were in the nature of mere temporary ijarahs, or farming leases; and that, the last of these having expired, it was open to the Government, and is now open to him, the appellant, to resume the possession of the lands, and either to make the collections from the ryots and actual cultivators himself, or to make a new lease or settlement with the highest bidder. He further contends that, if the proceedings of Government have given to the respondents any equity for a re-settlement, that equity is one which cannot be enforced in a suit brought under the special statutory jurisdiction given by Act X of 1859 to Collectors in cases of dispossession. It is admitted that the appellant, as purchaser, can claim no higher rights than those possessed by the Government at the date of the sale to him; and that, if Government had then waived or lost the right which it may have had originally to cancel the tenure, he cannot now assert such a right.

The questions argued at their Lordships' bar were—

1. Whether the Government, upon the true construction of Regulation XI of 1822, (the Sale Law under which it purchased,) ever had the right to cancel or destroy this tenure.

2. Whether, assuming that right to have existed, it was ever in fact exercised, whilst it was capable of being exercised.

And lastly, whether the suit, whatever be the rights of the respondents, has been properly brought under the 6th Clause of the 23rd Section of Act X of 1859.

Their Lordships will consider these questions in the order in which they have just been stated.

The general policy of the Revenue Sale Laws that have been passed since the Perpetual Settlement has been to protect the public revenue by placing the purchaser of an estate sold for arrears of revenue in the position of the person who, at the time of the Decennial Settlement, engaged to pay the revenue then fixed. They, therefore, gave, or sought to give, to the purchaser, the power of abrogating all engagements made by the defaulting zemindar or his predecessors since the settlement, whereby the zemindary rents and profits, which were the security to Government for the due payment of its revenue, were diminished. The Indian Legislature, however, has not uniformly tried to effect this general object by precisely the same means. The various statutes which it has from time to time passed for the purpose differ in the language of their provisions and in the stringency of the powers conferred by them. Those enactments, at least those that were passed before 1840, are reviewed in the very able paper signed by Mr. Colvin, which is printed in this Record. It was called forth by a difference of opinion between the Board of Revenue, of which he was then the Secretary, and Mr. Dampier, the Commissioner of the division in which this estate was situate; Mr. Dampier taking the view now contended for by the respondents, viz., that the talukdars, whether their tenures were created before or after the Decennial Settlement, were entitled to retain possession of their lands, subject, save in certain exceptional cases, to the liability of enhancement of rent according to the Pergunnah rates. And this, as is shown by the Record at page 17, was the view of the law expressed by the Board of Revenue itself in May 1833. Mr. Colvin's letter was written in 1836 on behalf of the Board of Revenue to combat and overrule this construction of the law.

To some of Mr. Colvin's conclusions their Lordships give an unqualified assent. They concur with him in holding that, under the Sale Law as it existed before 1822, a talukdar could not be dispossessed of his lands at the will of the purchaser at the sale; that he was at most liable to pay the full pergunnah or district rate for them; and could only be ejected from them if he finally declined to hold them at the enhanced rent. They are also of opinion that Mr. Colvin is right in holding that under Regulation XI of 1822 the law respecting dependent taluks created subsequently to the settlement was "that such taluks were liable to be wholly avoided and annulled at the option of the purchaser at a sale for arrears of revenue," unless they fell within the class contemplated by the 32nd Section of that Regulation. The language of the 31st Section is very distinguishable from that used in the earlier Regulations. It provides that "all tenures which may have originated with the defaulter or his predecessors shall be liable to be avoided and annulled." On the other hand, the 5th Section of Regulation XLIV of 1793 provides only that the *engagements* which the defaulting proprietor may have contracted with dependent talukdars, as also all leases to under-farmers, shall stand cancelled; and that the purchaser shall collect *from the talukdars* rent according to the full Pergunnah rates. The effect, therefore, of the earlier statute was to cancel a farming lease; but to keep alive the talukdar's tenure, though at a rent liable to enhancement.

Hence the question between the Commissioners and the Board of Revenue in 1836 was, as the question between the parties on this part of the case now is, whether talukdars of the class of Bishonath Roy were within the protection of the

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32nd Section. Mr. Colvin contends that "the mofussil talukdars," spoken of in that section, "being described as persons having an hereditary transferable *property* in the lands or in the rents thereof," must be taken to be such talukdars as are described by Section 5 of Regulation VIII of 1793 who, at the time of the Decennial Settlement, might have engaged directly with Government for the payment of the public revenue assessed on their lands; and even after the Settlement, and until that right was taken away by Regulation I of 1801, might have claimed to be separated from the estate of the zemindar. He argues that the term does not include dependent talukdars whose tenures have been created since the Settlement, they being talukdars who, under the 7th Section of Regulation VIII of 1793, are declared not to have the *property* in the soil, but to be mere leaseholders.

Their Lordships are of opinion that there is considerable weight in the reasoning of Mr. Colvin, which receives some corroboration from that portion of the 14th Section of Regulation I of 1801 which declares that the rules regarding separable taluks contained in Regulation VIII of 1793 were never meant to apply to any new taluks constituted since the Decennial Settlement. Considering, however, that they have been referred to no case in which the clause now under consideration has received a judicial construction; that the question was not raised or considered in the Courts below; and that its determination is not absolutely essential to the disposal of this appeal, they abstain from expressing any further or more decided opinion concerning it.

They will assume that an auction-purchaser under Regulation XI of 1822 had the option of cancelling and avoiding such a talukdary tenure as that of Bishonath Roy, which Mr. Colvin claims for him. But granting this, they are of opinion that the power was one which he might or might not exercise; and that, in conformity with the principle of the decision in the Ranee Surnomoyee's case, (10 Moore's I. A.,) it was incumbent on the Government in this particular case to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure.

Their Lordships will, therefore, proceed to consider the second question raised on this appeal, viz., whether the Government has, in fact, exercised its power of cancellation whilst it was capable of so doing.

Mr. Colvin's letter being the expression of the views of the Board of Revenue, is not merely an able exposition of the law; it is also the best evidence we can have of what the Government, in February 1836, intended to do in respect of the dependent taluks forming part of this estate. Nor is it possible to read the last paragraphs of that letter, beginning with the 52nd, without coming to the conclusion that it was then the intention of Government, whatever might be their extreme rights, to make settlements with the talukdars of all classes, putting them, or at least all who were not specially protected against enhancement of rent, in the position which they would have held of *right* before 1822, viz., that of under-tenants entitled to retain possession of their lands during the subsistence of their tenure, subject to the condition of having their rents enhanced, according to the Pergunnah rates. The letter, no doubt, contemplated the exercise of the extreme rights of Government if the talukdars should not, within a certain time, enter into the new settlement. But the primary object of Government was to settle with the talukdars; and the if settlement were made, the tenures would continue to exist, though as taluks held at variable instead of fixed rents. Nor is it improbable that, considering the power and influence which the hereditary possession of land seldom fails to give in India, especially in a remote district like that in which this estate is situate, the Revenue officers felt that such an arrangement would be beneficial to Government as well as to the talukdars.

Do, then, the subsequent proceedings show that Government departed from this its original intention?

In considering these proceedings it should be borne in mind that the position of Government in one respect differed from that of an ordinary purchaser at a sale for arrears of Government revenue, inasmuch as the 36th Section of Regulation XI of 1822 expressly declares that an estate purchased by Government shall be subject to the rules applicable to the management of ordinary Malgoozary Mehals held Khas. By virtue of this enactment the Revenue Officers had over this estate in 1833 all the powers conferred upon them by Regulation IX of 1825, and by the provisions of Regulation VII of 1822, which by the 2nd Section of the former Regulation are extended to, and made applicable to, estates held Khas, and the other lands there mentioned. It follows that Government, though its rights either in respect of cancelling the under-tenures or of enhancing the rent were not higher than those of an ordinary auction-purchaser, may have been at liberty to assert those rights by a procedure not open to a private individual.

Their first proceeding was, however, one which every zemindar is bound to make, the foundation of a suit for enhancement of rent. It was the issue on the 7th June 1836 (Appendix, p. 31) of a notice under the 9th Section of Regulation V of 1812 claiming a rent raised at discretion to the sum of 5,000 rupees. This led to the proceeding of Mr. Allen of the 19th June 1837, (p. 104).

Great stress has, in the argument for the

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appellant, been laid upon this proceeding. Their Lordships, however, feel that in considering its effect they should look to its nature and not to expressions loosely used in it, such as "it be ordered that the taluk be set aside," or the like. And if this be done it will be found that it is nothing but an ordinary proceeding for the enhancement of rent against a person admitted to be in occupation of the lands. On such a proceeding it is open to the defendant to contest either the right to enhance at all, or the reasonableness of the rent claimed, or both without, however, admitting the reasonableness of the rent claimed if he expressly contests only the right to enhance. The talukdar in this case adopted the former course by asserting that his taluk was one at a fixed rent, incapable of enhancement even by an auction-purchaser. And the proceeding determined this point against him. It is, in fact, such a proceeding as Mr. Colvin in the 56th paragraph of his letter assumes to have been already taken.

Again, it appears that in July 1836, and, therefore, between the date of the notice and that of Mr. Allen's proceeding, the Government had given orders for the measurement and survey of the lands, (page 153, line 50). This shows that the rent of 5,000 rupees was a mere arbitrary claim made in order to try the right to enhance, and that the proceeding of 1837 determined neither the rent to be fixed nor the person with whom the settlement was to be made.

The measurement and survey were not completed until the Bengal year 1245; and on the 3rd September 1839 the Commissioner (page 153, line 53) wrote to the Collector that notice was to be issued to the talukdars to appear within fifteen days and make settlements for twenty years at the Pergunnah rates, and that if they did not appear ijarah settlements would be made *after annulling their rights.* These directions clearly imply that up to that time the intention of Government was still not to destroy the talukdary tenures unless the talukdars should finally refuse to engage at the Pergunnah rate.

Accordingly the notice at page 37 of the Record was issued to the heirs of Bishonath on the 5th December 1839. It invited them to come in and make a talukdary settlement within fifteen days, in default of which they were to be held not to have any rights as Putnee Talukdars of the late zemindar, or of possession.

From Mr. Money's proceeding (page 153) it appears that the respondent Obhoy Chunder did not come in under this notice to accept the settlement; that he still struggled either for a settlement at the old rate, or for delay; and that Mr. Money accordingly as Collector granted an ijarah for twenty years to a stranger, Sheikh Aeenoodeen. This arrangement, however, was subject to confirmation by higher authority, and from the recital at page 107 we learn that on the 24th November 1840 the Commissioner refused to confirm it *in integro*, and reduced the lease for twenty years to one for a single year. And at page 42 we have a further notice to the heirs of Bishonath, dated the 23rd February 1841, calling upon them once more, in anticipation of the expiration of the one year's lease to Aeenoodeen, to enter into a talukdary settlement at the Pergunnah rate, under pain, in case of default, of losing all right to the taluk.

The appellant relies much on the interruption, or assumed interruption, of the respondent's possession by the grant of this lease to Aeenoodeen. And if the original lease for twenty years had been confirmed, and possession had followed thereon, the inference that the old talukdary tenure had been cancelled would have been strong.

The Commissioner's letter of the 24th November 1840 was not, however, produced *in extenso;* and it is to be presumed that the appellant, who derives title from the Government, would have found means to produce it had it supported his case. Its effect, as stated on the record, coupled with the fact of the subsequent notice to the heirs of Bishonath, which treats their talukdary tenure as still subsisting, leads their Lordships to the conclusion that the lease for a year to Aeenoodeen was nothing but one of those temporary arrangements pending negotiations for a final settlement of the revenue which the Revenue authorities were, under Regulation IX of 1825, competent to make. Certain it is that the result of this second notice was that in 1841 the respondent, Obhoy Chunder, entered into the first engagement for one year, and in 1842 made the engagement for twenty years; and the kuboolyats and other documents executed on both occasions support the conclusion that those settlements were talukdary, and were made with him as representing the persons entitled to the hereditary possession of the lands under the old taluk granted to Bishonath, although their continuing tenure may not be described with strict accuracy as a Putnee taluk.

It is further to be observed that, if the Government had not effectually annulled the tenure before 1842, it had then lost its statutory right to do so, since Regulation XI of 1822, upon which that right depended, was repealed by Act XII of 1841; and that it is, therefore, unnecessary to consider the subsequent proceedings. The conclusion, then, to which their Lordships have come upon this part of the case is that the Government, whatever may have been its powers, did not, in fact, cancel or destroy the tenure, but left the talukdars in the position in which they would have been, as of right, under the old law, reducing their tenure from a taluk at a fixed to one at a variable

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rent. And it follows from this that the appellant, though he has the right to bring a suit properly framed for the further enhancement of the rent, is not entitled to disturb the possession of the talukdars, or to let the land over their heads to the highest bidder.

Upon the last question their Lordships think it sufficient to say that the suit being one between under-tenants claiming a right to the possession of lands of which they have been dispossessed, and their zemindar who disputes their right of possession, has, in their Lordships' judgment, been properly brought under the 6th Clause of the 23rd Section of Act X of 1859.

Their Lordships, therefore, being of opinion that no ground for disturbing the decree under appeal has been established, will humbly advise Her Majesty to dismiss the appeal with costs.

Decree for enhanced rent—Non-execution—Intermediate settlement between parties.

Appellant (a Maharajah) sued a talukdar for arrears of rent amounting to Rupees 77,854, and obtained a decree for Rupees 12,000 and costs. The plaint was based on a decree in an enhancement suit, by which it was directed that the rent payable by the talukdar should be enhanced to Rupees 10,185-10-0 per annum. This decree was not enforced save as to costs. The Maharajah put in his own agent to collect the money. The talukdar petitioned the Maharajah not to sell the taluk for non-payment of rent, promising to pay Rupees 2,000 a year. To this appellant assented by letter, though he afterwards contended that what he intended was that this payment was to be in addition to the enhanced rent decreed.

HELD, *confirming decision of the lower Courts, that by this petition and letter the parties had assented to a re-settlement of rent at the rate of 2,000 rupees; that the agreement therein contained was an agreement for re-settlement to continue until, at least, a more formal and definite settlement should be come to; and that it substituted the rent so fixed for that decreed in the enhancement suit.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Beerchunder Jobraj *v.* Ramcoomar Dhur and others, from the High Court of Judicature at Fort William in Bengal, delivered 21st February 1870.

Present :

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS is an appeal from a decree of the High Court of Judicature of Calcutta which affirmed a decree of the Collector of Zillah Tipperah. The plaint on the part of the appellant, the Maharajah, was for the recovery of six years' arrears of rent, amounting to 77,854 rupees and a fraction; the decree awarded him 12,000 rupees, treating a petition and letter, to which reference will be presently made, as a re-settlement of the rent. The plaint, which is dated the 20th December 1861, was founded on a decree in an enhancement suit, which is dated in 1848, and which, according to the terms of it, " ordered that the suit be decreed, and the annual rent of 10,185 rupees, 10 annas the defendants do pay, and the defendants be responsible for the costs of the suits." Summary execution of this decree, except as to costs, was refused, but as to costs it was granted; and under that execution for costs the taluk of the defendants (who are now represented by the respondents) was attached and lotted for sale. The appellant then instituted a regular suit to reverse the order refusing execution as to rent; this suit was dismissed. The appellant appealed to the Sudr, and the case was remanded for trial. On re-trial the case was given against the appellant; he again appealed to the Sudr, and that Court, with reference only to the construction of the decree of 1848, ruled that the meaning of it was to give the appellant an enhanced rent for 10,185 rupees, 10 annas for 1838. The date of this last decree was the 23rd August 1860. In the meantime, that is, before and up to 1856, a kroke sezawul was appointed by the appellant for the purpose of collecting rents; then there followed the petition and letter on which the decree complained of was founded. Shortly afterwards the appellant proceeded against the talukdar for non-payment of rent according to the agreement contained in the petition and letter on which order was passed for the sale of the taluk. The talukdar appealed, stating that there was no mention in the agreement for payment by instalments, and the order was reversed. At the close of the year, the appellant, instead of taking the 2,000 rupees which the talukdar had lodged in Court as his first yearly payment of rent on the footing of the petition and letter, took further proceedings for the sale of the taluk and obtained an order accordingly; the talukdar appealed, and the Court reversed that order by an order, dated the 3rd

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July 1863, which, so far as it is material, is in these terms:—

"On perusal of the whole of the papers of the case it appears that this case has arisen from an attempt to give effect to a private arrangement made between the parties for the adjustment of the sum due to the Maharajah, that is, the decree-holder. By this arrangement, 2,000 rupees were to be paid annually to the Rajah out of the proceeds of the debtor's taluk, and, if not paid, the taluk was to be sold in execution. But, at the same time, a remarkable portion of the arrangement was that the collections were to be made by the Rajah's own tuhsildar. If the onus of collections and remitting 2,000 rupees a year had been thrown solely on the talukdars, non-fulfilment by them of the terms accepted by them would have been rigidly enforced; but here the presumed default is with the decree-holder's goomastah (agent) and, therefore, it seems to be not just to visit the debtors with a responsibility which, it may be said, the Rajah took upon himself. It seems to me, therefore, to be the more proper course, under such circumstances, that when in any one year the payment falls short, the debtors should have notice of the deficiency, and should be required within a limited time to make it good; and, if the instrumentality of the tuhsildar should be dispensed with and the debtors would undertake to pay up annually the sum of 2,000 rupees, their failure to do so would render the taluk liable to be sold. I set aside the Principal Sudr Ameen's order, who will be guided by these remarks. The costs of this appeal will be borne by the parties respectively."

Pending these latter proceedings the appellant had instituted the suit in which the decrees from which he now appeals were made.

It was argued on the part of the appellant—first, that there had been default on the part of the respondent; secondly, that the effect of the petition and letter was *res judicata;* thirdly and principally, that the construction and effect of the petition and letter was that the defendant thereby agreed to pay 2,000 rupees annually, irrespective of, and over and above, the rent of 10,000 and odd rupees which it was said was the annual rent.

The facts stated are sufficient to show that there was no default on the part of the talukdar. The petition and letter were not taken into consideration or dealt with by the Court in any way antecedently to the time when the appellant proceeded on the footing of them, and obtained the decrees for sale of the taluk, which were reversed; and, though their effect was pleaded as one of the defences in the suit which resulted in the decree of the 23rd August 1860, there was no adjudication in that suit upon that issue. Therefore, it remains to consider that which formed the principal ground of argument, viz., the construction and effect of the petition and letter.

The rent of the taluk previously to the enhancement suit had been somewhat less than 500 rupees a year. The original suit sought an enhancement to the amount of 4,000 rupees a year. By a supplemental suit an enhancement was sought to the amount of 10,000 rupees and upwards. The rent of 10,000 rupees and upwards was never paid, or, unless the petition and letter can be held to have that effect, agreed to be paid. The enhancement decree was confined to the year 1838, and was unusual in form. The ordinary course of an enhancement suit is that the landlord gives notice of an increase of rent; to this the tenant may agree; if he does not agree, a suit for enhancement is instituted, the amount of rent is fixed, and then the tenant has the option of continuing at the increased rent, or going out of possession. In this case the appellant put a kroke sezawul into possession, and, while the kroke sezawul was in possession, the following petition was presented to the Maharajah:—

"Petition of Sree Ramcoomar Dhur, inhabitant of Mercotta, Pergunnah Noornuggur. It is submitted that in Chucklah Roshunabad, appertaining to Pergunnah Noornuggur, is a taluk in my own and my brother Joycoomar Dhur and others' possession, called after the name of Nundocoomar Chowdhry. After a decree was obtained by a suit being instituted on behalf of Sirkar (your Honour) for fixing rent, a kroke tuhsildar or sezawul has been appointed for collecting arrears of rent of the said taluk, and the said taluk has been lotted for sale for realizing the costs of the suit. Incarnation of virtue! there is no other means of paying off my debt, for costs of the suit, and for current and arrear rent, and the appointment of sezawul for collection entails heavy expenditure for collection, and owing to this the amount liquidated is very small. There is no profit to Sirkar (your Honour) by incurring expenses in this way; whereas I suffer much in supporting myself with food and clothing, and my debts are not being paid off. It is my prayer that, if the execution of the decree be stayed and if the tuhsildar acts in accordance with my views, then, by defraying a small sum for collection expenses, I can cause the sum of 2,000 rupees to be annually paid to Sirkar (your Honour) on general account, and besides that I can thereby manage to support myself. Therefore, it is prayed that, my petition being granted and the sale of the said taluk being prevented for the present, a letter be sent to the tuhsildar, to the effect that the said tuhsildar, by collecting the rental with my aid and advice, do annually pay to Sirkar (your Honour) the sum of Company's Rupees 2,000, on the joint account of costs of the said suit, and current and arrear rental of the said taluk;

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and from the amount surplus collection deducting collection charges according to list at Company's Rupees 21 per mensem, whatever balance will be left will be paid to me on receipt. If, anyhow, I cannot cause the said Rupees 2,000, exclusive of collection expenses, to be annually paid to Sirkar, (your Honour,) then I will not be able to raise any objection to the said taluk being put up for sale for the balance of my debt, deducting the amount paid. I, being present with the tuhsildar, will jointly collect the rental of the said taluk, and will endeavour, by all means, without any objection, to make payments in accordance with the aforesaid settlement. Finis. Year 1263 of Tipperah, date 16th Bhadro.

"P. S.—In regard to the condition which has been written of the annual payment of Rupees 2,000, if in any year any amount less than the above sum be paid, then, according to such writing, all such sums paid in every year will go to the payment of my debt for current and arrears of rent, and no portion of it will be put down to the payment of the costs of the decree."

The endorsement on this petition by the appellant's Mooktear was in these terms:—

"It is known that, owing to the petitioner having adversely put obstacles in the way of collections, the expenses in the Mofussil become very great, and owing to that collection, and payment is not made, and the petitioner having filed a lengthy petition in the Execution Suit, obstructs the sale. Under such circumstances, if, by bringing the petitioner under subjection and preventing the sale, and by giving a letter to the petitioner for assisting in making collections in the Mofussil, a greater sum than before, that is to say, the sum of Rupees 2,000 is annually paid to Sirkar, (your Honour,) then, instead of loss, it is a profit to Sirkar. Rather heavy expenses were incurred before by employing numerous men for the purpose of collection; now, if the petitioner can, by personal exertions, make more payment with less expenditure, and if, besides the said sum paid and collection charges, there is a surplus collection, then to pay that sum to the petitioner for his support is no loss to Sirkar, (your Honour). Therefore, it is ordered that a separate proceeding be written in this matter, and the execution of the decree being stayed for the present, the above intention be made known, by chittee, to the petitioner and the tuhsildar. Finis. Year 1263 of Tipperah, dated 16th Bhadro."

And thereupon the following letter was written on the appellant's behalf:—

"Letter addressed to Sree Ramcoomar Dhur, inhabitant of Mercotta, Pergunnah Noornuggur. This is the order, business as follows:—After a decree was obtained by instituting a suit on behalf of Sirkar (his Honour) for [illegible]ing rent of the taluk called Nundocoomar Chowdry, situate in the aforesaid Pergunnah, and in the possession of yourself and your brother Joycoomar Dhur and others, a Khas Tuhsildar was appointed for the realization of arrears of rent of the said taluk, and the said taluk has been lotted for sale for the realization of the costs of the suit. On this you have petitioned that there is no other means of paying off your debt for costs of the suit and rental, and by collections being made by the sezawul great expense is incurred under the head of charges for collection, therefore a very small amount is paid in liquidation. There is no profit to Sirkar (his Honour) by incurring expenses in this way; whereas you are in difficulty in obtaining food and clothing, and your debt is not being cleared off. It is your prayer that if the execution is stayed and the tuhsildar acts in accordance with your views, then you can cause the sum of 2,000 rupees to be annually paid to Sirkar (his Honour) by managing with a small sum for collection charges, and besides that you can manage to support yourself from the surplus thereof. Therefore, having granted your petition, I am going to give a letter to the tuhsildar by preventing the sale of the said taluk for the present. The said tuhsildar, by collecting rents with your aid and advice, will annually pay to Sirkar (his Honour) the sum of Company's Rupees 2,000 on account of costs of the said suit and current and arrears of rent of the said taluk; from the amount which will be collected over and above that sum, deducting charges for collection according to list at the rate of Company's Rupees 21 per month, the balance that will be left will be paid to you by receipt. If, anyhow, the said sum of Rupees 2,000 exclusive of collection expenses is not annually paid to Sirkar, (his Honour,) then you will not be able to raise any objection to the said taluk being put up for sale. You, being present with the tuhsildar, will make every exertion to collect the rental of the said taluk with mutual assistance, and to see that payments are made according to the above-mentioned fixed arrangement. Finis. Year 1263 of Tipperah, dated 17th Bhadro.

"Written by
"SREE NUNDOKISSORE BISWAS.

"P. S.—In regard to the condition which has been written of the annual payment of the sum of Rupees 2,000, if in any year a lesser sum than the above is paid, then, according to this writing, all such sums in each year will go to the payment of your debt on account of current and arrear rental, and, no portion of it being passed to the account of costs of the decree, execution of the decree will be issued for the realization of costs. Finis. 17th Bhadro, 1263 of Tipperah.

"Written by
"SREE NUNDOKISSORE BISWAS."

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The only evidence in support of the claim was the Enhancement decree; there was no proof of payment of, or of agreement to pay, the 10,000 and odd rupees, or of any facts from which such agreement could be inferred; the appellant had put his own agent into the receipt of the rents; the footing on which the petition was presented and the answer returned to the talukdar is plain from the endorsement of the appellant's Mooktear: it was "that 2,000 rupees a year could not be collected from the taluk;" on the face of the petition and letter the 2,000 rupees is for "current and arrear rent and costs," with a proviso that in case of default the payment is to be attributed to the arrears of and current rent; the appellant's agent is to remain in the collection to collect with the talukdar's assistance and to pay the surplus beyond the 2,000 rupees to the talukdar: this excludes the supposition of the 2,000 being in addition to, or exclusive of, the 10,000 rupees rent, and is, in their Lordships' opinion, the true effect of the agreement as it is to be collected from the two written documents, regard being had to the position of the parties at their date. This view is confirmed by the proceedings which the appellant himself took on the footing of the petition and letter, and the order of the 3rd July 1863. The agreement was an agreement for a re-settlement of rent which would continue at least until a more formal and definite settlement should be made. And it substituted the rent so fixed for that decreed in the enhancement suit. All that the appellant was entitled to on his plaint was given him, and their Lordships will, therefore, humbly advise Her Majesty to dismiss this appeal with costs.

[N. W. Provinces Cases.]

Grant of land on favourable tenure—Laches of Government—Construction of grant—

In 1819 *Government conferred on a Pindara Chief in lieu of a money allowance a grant of land to be held rent-free during his life, but subject to payment of a certain rent in the hands of his heirs. It was contended by grantee's heir that this grant comprised the whole of the twenty-seven villages of which the jaghire consisted. On the part of the Collector it was contended that the grant only extended to* 3,933 *beegahs of land which were then under cultivation. But the Government had long recognized the grant as consisting of the twenty-seven villages; and it was not until a new settlement in* 1862 *that they declared that the rent payable by the grantee's heirs extended only to* 3,933 *beegahs.*

Held, *that the terms of the sunnud clearly conferred the whole land on the grantee and his heirs, subject to a payment by the latter of an istimrar jumma of Rupees* 1,877-8-0; *that, however improvident the grant might be, it must be upheld; and that no suggestion of mistake or oversight on the part of Government was admissible, especially as the terms had been formally sanctioned by the settlement of* 1837.

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Sheikh Zuhooroóddeen and others *v.* the Collector of Goruckpore, from the late Sudr Dewanny Adawlut at Agra, delivered 22nd February 1870.

Present:

Sir James W. Colvile.
Sir Joseph Napier.
Lord Justice Giffard.

Sir Lawrence Peel.

There is little, if any, dispute concerning the facts of this case. It is admitted that, on the 14th January 1819, Lord Hastings, the then Governor-General, executed in favour of the Pindara Chief, Kadir Buksh, the sunnud of which the construction has been so keenly contested, that the grant, whatever it comprised, was made in lieu of a money allowance of 300 Sicca rupees per mensem, which the Government had previously undertaken to pay to the Pindara for his support; that the lands granted by way of jaghire were to be held by him rent-free during his life, but were to be subject to the payment of Government revenue in the hands of his heirs and successors; and that in January 1822 Lord Hastings' Government, on the application of Kadir Buksh, determined that the lands comprised in the jaghire should on his decease be continued to his heirs to be held by them at an Istumraree Jumma of 1,877 rupees, 8 annas. The principal question in the cause is what passed by the sunnud. The appellants contend that the subject of the grant was the whole of Taluka Guneshpoor, which had been purchased by Government from one Motee Khanum with a view to its being granted to Kadir Buksh. The respondents assert that it was only 3,933 beegahs, part and parcel of that taluk.

Taluka Guneshpoor, as purchased by Motee Khanum at an auction sale and as conveyed by her to Government, consisted of twenty-seven principal mouzahs or villages; and to one or other of these villages were attached five Towfeer villages, of which the names do not appear either in the conveyance of Motee Khanum to the Government or in the sunnud. Each principal village, as the

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taluka originally stood, consisted of some cleared and cultivated land, and of a considerable amount of forest; and thus the twenty-seven villages amongst them included the whole of the forest land now in dispute. The cleared or cultivated lands were comprised in the 3,933 beegahs to which the respondents say the grant was confined, and these were scattered about the surrounding forest in the manner shown by the first of the maps in evidence, which is admitted to be a correct map of the whole taluka sold by Motee Khanum to Government.

Kadir Buksh was put into possession of his jaghire by a Government officer, Captain Stoneham, described as Superintendent of the Pindara Chiefs. He, by letter dated the 25th January 1819, brought to the notice of the Collector the five Towfeer villages, and stated that they had been represented to him to form part of the Guneshpoor Estate. It is difficult to read his letter without coming to the conclusion that it assumes the whole of that estate to have been granted to Kadir Buksh. The Collector also, on the 9th February 1819, announced to the Board of Commissioners (then the highest authority under the Supreme Government in the ceded provinces,) that Kadir Buksh had been put in possession of the Taluka Guneshpoor; and that the establishment entertained for collecting the revenues of the estate, whilst it belonged to Government, had been discharged. In 1821 there was a dispute between the Rajah of Nuggur and Kadir Buksh in respect of the boundary lands and jungle attached to the jaghire, which was decided in favour of the latter. This was followed in 1826, in 1834, and in 1835 by other suits in which the boundaries of Talooqua Guneshpoor and the right to forest lands on those boundaries were in dispute; and in each of these Kadir Buksh was successful, and was recognized as the proprietor of Taluka Guneshpoor, including all that had passed under that description by the auction sale to Motee Khanum and from her to the Government. The most important of these suits is that of 1826, because to it the Collector was a party; and the direct issue raised was whether the Towfeer villages were part and parcel of Taluka Guneshpoor. In the presence of the Collector they were decided to be so, and were treated as belonging to Kadir Buksh. Again, it appears that the title of Kadir Buksh to the whole taluka was recognized in the years 1836 and 1837 in various proceedings taken by the original proprietors under Regulation I of 1821 and Act III of 1835 to set aside or modify the auction sales. In these proceedings Kadir Buksh intervened as the actual proprietor of the whole of what had been sold at the auction sales, which were impeached. And, on the other hand, the Government did not intervene to claim or defend a title to any part of what had been so sold. The fact has been questioned by Mr. Pontifex, if not also by Mr. Forsyth; but on this evidence their Lordships have no difficulty in finding that from 1819 up to the time of his death Kadir Buksh was with the knowledge of the Government and its Revenue officers in possession of the whole taluka and was recognized as its owner in various judicial proceedings. Nor is there the slightest evidence that during that period the Government asserted a title to, or exercised any right of ownership in, the forests comprised in the taluk.

Kadir Buksh died in 1837, and his death was the occasion of proceedings wherein the then Government recognized still more unequivocally his title under the sunnud to the whole taluka, including the lands in dispute. Upon his death it became necessary to apportion the fixed revenue or jumma of 1,877 rupees, 8 annas amongst the different villages. This was done by a Mr. Chester, acting as Assistant Collector and Settlement Officer. It is admitted that the measurements of the different villages on which he proceeded included all the forest and other land in dispute, and that his settlement, in fact, treated the heirs of Kadir Buksh as the proprietors of the whole taluka, subject to a fixed revenue then to be apportioned among the twenty-seven mouzahs, or villages, into which the total area of the taluka (being 10,592 acres) was taken to be divided.

Nor can this settlement be treated as the act of a subordinate officer liable to error and acting in ignorance or forgetfulness of the history of the taluka. The smallness of the revenue attracted the attention of the Commissioner. He demanded an explanation on the 5th July, which was given by Mr. Chester on the 9th July 1838. The settlement went in due course to the Board of Revenue, was pronounced by it to be "fair, moderate, worthy of approval, and creditable to Mr. Chester," and, as such, was on the 14th January 1840 reported to the Governor-General, and so confirmed. It is hardly conceivable that, if the former Government had, by its sunnud, granted only a portion of the taluka, retaining its rights in large and valuable forests, there should have been no record of such retention in one or other of the various offices and departments through which this settlement passed with approval. Yet the present claim of Government rests on the assumption that the settlement proceeded on a gross and palpable error.

It is further remarkable that the alleged error was brought to the attention of the Revenue officers by the zeal of the ex-proprietors of the Guneshpoor Estate in proceedings extending over a period beginning in September 1843 and ending in February 1845. By petitions they brought almost the very case now made

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first before the Collector, then before the Commissioner, and finally before the Board of Revenue. Yet each of these authorities refused to recognize the error, and dismissed the petitions.

So things remained until 1862, when the point thus disposed of was again revived by Mr. White, a Deputy Collector on settlement duty in that part of Goruckpoor wherein this estate lies. It would appear by Act VIII of 1846, Section 1, that the previous settlement of Goruckpoor expired in July 1859, and it is to be presumed that Mr. White was employed in making the new settlement which then became necessary. It is to be observed, however, that the 3rd Section of the Act expressly declares that persons holding lands on special grants shall continue to hold them according to the terms of their grants. If, therefore, the whole of Taluka Guneshpoor was held by the respondents under the sunnud at the fixed jumma imposed by the letter of Government of January 1822, it was wholly out of the scope of new settlement which was then in progress. Mr. White, however, on the 9th of April 1862, in a paper more remarkable for zeal than for sound reasoning, communicated to the Collector his reasons for holding that the major part of the taluka was liable to resumption and full assessment as khiraji lands.

Assuming that the intention of Government in 1818 was to give Kadir Buksh nothing but a strict equivalent for the allowance of 4,000 rupees per annum, and proceeding also upon his own construction of the sunnud and other documents, he held that nothing was effectually granted beyond the 3,933 beegahs; that the fixed jumma was referrible only to that portion of the taluka; and that the rest remained liable to a fresh assessment of revenue, if indeed the respondents were entitled to be treated as in rightful possession of it, or as the parties entitled to engage for the revenue so to be assessed upon it. He charged Kadir Buksh and his representatives with having "dishonestly" enlarged the borders of the jaghire "by imposition and artifice," favoured by "a rare combination of chances," in which last phrase their Lordships conceive is included the remarkable consensus in favour of the appellants' title of all the Government officers, whether Revenue or Judicial, to whose notice the subject had been drawn during a period of more than forty years. The acts of those officers are accounted for by suggestions of error, mistake, or the omission to make due inquiry.

Mr. Bird, the Collector, to whom this communication was made, took the contrary view of the appellants' rights, and seems to have held that the former settlement could not be disturbed. He was, however, overruled by the Commissioner, whose decision was confirmed by the Board of Revenue, and the result was that by the Revenue authorities the taluka, *ultra* the 3,933 beegahs, was held to be subject to resumption and assessment of revenue at the current rates. The respondents thereupon brought their regular suit to contest these revenue awards, and to establish their proprietary right in the whole taluka under the sunnud at the fixed rent. But their suit was dismissed by the Judge of first instance, and his decree has been affirmed by the Sudr Court, both Courts holding that the claim of Government was well founded.

On the argument of this appeal the absurd and groundless imputations of fraud, which were cast by Mr. White's Report upon Kadir Buksh, have been very properly withdrawn. It was still suggested that the possession by the family in 1837 of great part of the lands then settled is to be accounted for by the hypothesis of accretion by means of gradual encroachment. Their Lordships can find in this record no proof that the family then possessed a rood of land other than that into the possession whereof Kadir Buksh had been put by Captain Stoneham, the Government officer, under whose superintendence he was placed. Of lands beyond the boundaries of the taluka, as it passed from Motee Khanum to Government, there can, on this suit, be no question. The existence of such, and their liability to assessment, must be determined in some other proceeding. The fact that the more recent measurements assign a larger area to the taluka than is shewn by the earlier documents is to be accounted for by the more accurate survey that preceded the thirty years' settlement of the North-West Provinces. The only questions for their Lordships' determination are—first, did the grant by the sunnud pass the whole taluka as it was purchased by Government, or only the 3,933 beegahs? secondly, was the perpetual jumma of 1,877 rupees, 8 annas, fixed by Government in 1822 upon the 3,933 beegahs, leaving the rest of the jaghire (if any) subject to future assessment? and thirdly, was either act (supposing the two former questions to be determined in favour of the appellants) the result of a mistake on the part of Government, which is capable of rectification in this suit?

The construction of the sunnud must, of course, be determined by the terms of the instrument. It is, however, not too much to say that where general descriptive terms such as "villages" or the like have been used in a grant, and both the parties have by their acts put a particular construction upon them, and rights depending on that construction have been enjoyed for many years, it lies upon those who impugn that construction to show that it is erroneous. How is this attempted in the present case?

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The Sunnud is in form a notification "that the villages comprised in the Taluka Guneshpoor, whether principal villages or dependencies, according to the subjoined details purchased by the Government, including all lands cultivated and waste, with fish and forest rights, have from the beginning of the autumnal season of 1226 Fusly been granted by the Government as a rent-free jaghire to Kadir Buksh in lieu of 4,000 rupees allowed him as maintenance under the orders of the Most Noble the Governor-General, dated April 10, 1818." And the subjoined details consist of an enumeration of the twenty-seven villages, showing under the head of "estimated area" areas aggregating 3,933 beegahs, and giving no specification of boundaries. The learned counsel for the respondents contrast this with the language of the conveyance from Motee Khanum to Government, (at p. 16,) which, after declaring that Taluka Guneshpoor, consisting of the twenty-seven villages detailed below, was by auction-purchase the property of the lady, conveyed "her ownership of the said villages, together with all the rights and interests, original and attached, having distinct boundaries, inclusive of all the lands, arable and not arable, forests, wells, ponds, tanks, and pools, rights of forests and fisheries, fruits, gardens, trees, both fruitful and barren, saline land, and the houses of tenants." And they rely much on the larger general words here used, and particularly on the word "forests," which was not to be found in the sunnud. They meet the argument founded on the other side upon the words "fish and forest rights," ("julkur" and "bunkur,") by saying that the term "bunkur" does not necessarily imply title to the soil of the forest in which it is exercised, since it may import rights to be exercised over the forests of another; and that even if taken in the former sense it may be understood to be the bunkur derivable from that portion of the 3,933 beegahs which by the statement of the 22nd August 1818, at p. 72, is shown to have been either barren or still uncultivated, though fit for cultivation. They further rely strongly on the words "according to the subjoined details," coupled with the schedule specifying only as the areas of the villages such as made up the 3,933 beegahs.

It appears to their Lordships that these arguments, though more or less plausible, afford no ground for cutting down the grant of Government to the 3,933 beegahs. The subject of the grant, like the subject of the conveyance, consisted of the twenty-seven villages described in each case by the same names. It is shown beyond a doubt by the conveyance, and by the earlier Ruqbabundee at page 10, and it has even been admitted in argument, that these villages, as conveyed by Motee Khanum, make up the whole taluka, as delineated by the first of the maps, and comprised amongst them all the lands in dispute. An Indian village or mouzah is not a mere village in the sense of an aggregation of houses or huts, with the land actually cultivated by its inhabitants. It is a division of a Pergunnah, and may, as in the present instance, consist of dwellings, of lands cultivated, and of a large extent of forest in which the rights of a zemindar may co-exist with rights belonging to the villagers. If, then, there be nothing else in the sunnud to show that the villages granted by it and by the former conveyance, under the same names, are in the one case the villages defined by their known and ascertained boundaries, and, in the other case, the same villages *minus* their appendent forest, the mere fact that the general words are somewhat larger in the one instrument than they are in the other goes for very little. Is it then a legitimate inference from the words "according to the subjoined details" coupled with the list of the villages that the sunnud granted only a portion of each village, and that a portion defined by no boundaries, and further that the whole subject of the grant was a congeries of unconnected plots of cultivated land scattered about the taluka of which they formed part, and separated by forest retained by Government. Their Lordships can find in the passages relied upon nothing which warrants so violent and improbable a construction of the whole instrument. The words "according to the subjoined details" are followed by the words "purchased by Government," which support the hypothesis that what was granted was that which had been acquired by Government; and since these latter words make the subjoined details equally applicable to the estate purchased by Government and to the estate granted by it, it follows that the schedule must be treated as an imperfect description.

The learned counsel for the respondents have also dwelt much on the improbability that the Government of 1819 would have granted property of such extent or value in commutation of an allowance of 300 rupees per mensem, and called in aid of their construction the official correspondence which preceded the grant. It was pointed out by one of their Lordships that this correspondence could not be legitimately admitted as a key to the construction of the sunnud. They may go further and say that it does not to their minds establish the antecedent improbability that such a grant should have been made. The estate had been purchased for a small sum: the frequency of the prior auction sales suggests a doubt whether, in its then state, it was equal to the payment of the revenue assessed upon it; it was granted rent-free only for the life of Kadir Buksh; there was at that time no stipulation that his heirs should hold it at a fixed rent; and the Indian Government, which was then, and for many years

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afterwards, notoriously careless about the forests, may at the time of the grant have contemplated that, as the forests were reclaimed, the estate in the hands of Kadir Buksh's successors would become subject to a progressive revenue. Be that as it may, their Lordships have no difficulty in coming to the conclusion that, upon the true construction of the sunnud, the whole of Taluka Guneshpoor, as purchased by Government, passed under it.

If this be so, it is necessary to consider whether there is any ground for holding that, by the Government letter of the 18th of January 1822, the Istumraree Jumma of 1,877 rupees, 8 annas was fixed upon that part only of the jaghire which had before the grant been assessed to revenue, leaving the rest subject to the liability to future assessment. Many ingenious arguments founded on the principles upon which the land revenue is from time to time assessed in the Upper Provinces under the regulations were addressed to their Lordships. But they are of opinion that these are beside the present question. The act of Government in fixing a permanent revenue on any lands comprised in the jaghire was, *ex concessis*, an exceptional act of favour, and a departure from the general revenue law applicable to that part of India. The effect of the letter is to be determined by its language, and that seems to their Lordships to be conclusive. It expresses the determination of the Governor-General in Council that the lands comprised in the jaghire should, on the death of Kadir Buksh, be continued to his heirs, to be held by them at the Istumraree Jumma. The jumma was to cover whatever was included in the jaghire. The grant may have been improvident; but, if made by the Government of 1822, it is binding on the existing Government, and was properly so treated on the occasion of the settlement of 1837.

Upon the last point little need be said. If, as their Lordships think, the whole taluka was granted and afterwards made tenable at the permanent jumma, it is clear that neither act of Government can be rectified in such a suit as this upon a suggestion of mistake. But it is difficult to see how such a case could be successfully raised in any suit. How is it possible, at this distance of time, to enter, as it were, into the Council Chamber of Lord Hastings to measure the motives which prompted an act of grace in favour of a particular family, or to determine that his bounty proceeded upon mistake and not upon an appreciation of the facts, of which all might, and but for the assumed carelessness of his advisers must, have been before him.

A good deal was said on both sides touching the conduct of Government in taking the proceedings which have led to this suit. Their Lordships fully concede that it is the right, nay, the duty, of a Government to protect the public revenue against unfounded claims to particular exemption from burthens to which the community is subject. But in the present case their Lordships cannot but think that the rash views of Mr. White were too readily adopted by his official superiors, and that the Government was thus committed to dispute on insufficient grounds the effect of former grants, of which the more liberal construction was supported by an undisputed possession of forty years, and had been formally sanctioned by the settlement of 1837.

Their Lordships will humbly advise Her Majesty to allow this appeal to reverse the decree of the late Sudr Court at Agra, and to order that, in lieu thereof, a decree be made granting to the appellants the relief sought by their plaint with the costs of the proceedings in both the Courts below. The appellants must also have the costs of this appeal.

Decree for land—Government in possession—Refusal to yield possession—

A decree of Court awarded five villages to plaintiff for food and maintenance, with mesne profits from date of action till possession. Government were in possession, and had raised no objection save as to a certain piece of the land. Civil Court decided against Government, but they retained possession and appealed.

HELD, *that the respondent's title had been confirmed by a Court of competent jurisdiction, and that Government were in wrongful possession.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of the Secretary of State for India *v.* Mussamat Khanzadee, from the High Court of Judicature, North-Western Provinces, Agra, delivered 1st March 1870.

Present:

SIR JAMES W. COLVILE.
THE JUDGE OF THE HIGH COURT OF ADMIRALTY.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that there is no ground whatever for this appeal. The respondent's title rests upon the decree of the Commissioners, and it has not been alleged on the part of the Government in their pleadings or otherwise that that decree was other than a proper and binding decree. Their Lordships certainly see no reason why it should not be binding; the plaint on which it is founded is for actual possession of the land, but it is quite consistent with that plaint that a decree should be made, falling short of the extent to which the plaint went. The decree is in these terms:—"A decree is passed, assigning to the plaintiff "for her food and maintenance five villages in "Zillah Boolundshahur, equal in area, Government assessment, and income, to Mouzas "Lukhawlee and Soobee, and Ramghur and

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"Dowlutabad, of Pergunnah Seana; and "Seorampoor, Pergunnah Achar, which were "given in gift to Beebee Muriam, agreeably to "a deed of gift, dated the 22nd July 1854. "This decree is to be carried into execution, "and the plaintiff put into possession of the "villages; and she is, moreover, to receive the "mesne profits from the date of action brought "up to the date of being put into possession."

At the date of the decree the Government was in possession, and the proper person to give possession and to carry out this decree was the Collector. Their Lordships cannot at all come to the conclusion that the regulation or the circular, to which reference has been made, in any way affected the authority of the Collector. If the matter stood simply on the act of the Collector, their Lordships would hesitate long before they could accede to the view which has been advanced on the part of Government; but on turning to page 27 of Appendix, what actually appears is—that there were proceedings in the Civil Court founded on the decree—that the Government appeared in the Civil Court, raised no objection whatever except as to a certain particular portion of the land of which possession was given, and that there was a decision by the Civil Court against the Government, consequently the respondent's title was confirmed by the decree of a competent Court.

For these reasons their Lordships are of opinion that the Government was much in the wrong in taking possession as they did, and that this appeal never ought to have been brought. Their Lordships will, therefore, humbly advise Her Majesty that it be dismissed. The dismissal should be with costs.

SEASON REPORT.

Northern Section.—There was literally no rain in Ganjam, Vizagapatam, Godavery, and Kistna. In Nellore there was only a slight drizzle.

Ganjam.—In Ganjam, *Horse-gram* and *Lamp-oil seeds*, which were harvested, yielded about half a crop. The standing crops, consisting of *Raggy*, *Gingelly*, and *Tobacco*, were in good condition.

Vizagapatam.—No particulars have been furnished regarding the state of cultivation in Vizagapatam, but the water-supply is stated to have been good.

Godavery.—Unseasonable winds in Godavery seriously injured the later dry crops and *Cotton* plants, and the yield of the several species of *Gram* was unsatisfactory. The cultivation of *Summer Paddy*, *Sugar-cane*, and *Gingelly-oil seeds* was progressing, and *Chillies*, *Tobacco*, *Onions*, and *Turmeric* were thriving. Pasture was good, and almost all the channels were open.

Kistna.—There was no further cultivation during the month in Kistna, and ryots were engaged for the most part in harvesting standing crops, which yielded well except in a few instances. The *Pedda Jonna* and *Pyra* crops suffered heavily from the attacks of insects, blight, and the previous excess of rains.

Nellore.—Dry crops over the greater portion of the district suffered from blight. *Kasari* and *Nallavari* crops were sown, and lands were prepared for receiving the *Sujja* seed. *Iswara Korra*, *Sannavari*, *Pesara*, *Horse-gram*, *Oil-seeds*, *Oolundoo*, *&c.*, were harvested in all the taluks with good results.

Prices fluctuated in Ganjam and Nellore, and ruled high in Vizagapatam, Godavery, and Kistna.

Public health was good in Ganjam and Godavery. In the other districts, fever and small-pox were of general prevalence. Cholera was reported from only one district, Nellore.

Cattle disease existed in all the districts save in Ganjam.

Ceded Districts.—There were no rains in this section, except a slight fall in the town of Gooty, in the Bellary District.

Cuddapah.—Lands were being ploughed, and the cultivation of the usual crops was progressing in localities where irrigation was available. The standing crops, except in the Voilpaud Taluk, were thriving, and the yield of crops harvested was generally good.

Bellary.—In Bellary, agricultural operations were in progress.

Kurnool.—Second-crop *Paddy* was sown in the Nundial and Cumbum Taluks of the Kurnool District. *White Jonna*, *Bengal-gram*, *Wheat*, and *Cotton* were harvested over the most part of the district, but yielded scantily owing to the damage sustained by the crops from blight.

Prices were almost stationary in Cuddapah and Bellary.

Fever was generally prevalent, and small-pox also in parts of Kurnool. Fever pills were administered with benefit in Bellary.

Cattle suffered from disease in parts of Kurnool and Bellary. In the latter district, medicines obtained from Dr. Thacker were forwarded to the affected localities.

East Centre.—There were no rains, with the exception of slight showers, in one or two spots.

Madras.—Crops were withering where irrigation from channels was not available. The cultivation of *Navarai* and *Raggy* was progressing all over the district, and that of *Indigo*, *Country Beans*, and *Gingelly* under wells and the Polal Tank, in the Saidapet Taluk.

North Arcot.—In North Arcot cultivation was confined to tracts, under wells and tanks, holding supplies of water. Standing crops looked well, but here and there suffered heavily from blight. A few dry grains and *Samba* and *Peshanam Paddy* were harvested; but most of the crops had previously suffered from the attacks of insects and blight, and their yield was, therefore, probably not more than half the average out-turn.

South Arcot.—Cultivation was progressing, and *Samba* crops and a few dry grains were being rapidly harvested.

Prices were almost stationary in North Arcot. In South Arcot, the advent into the market of the produce newly harvested brought down the prices below those of the previous month.

Cholera was reported from all the three districts of this section, and fever and dysentery from South Arcot and Madras. Their prevalence, however, was happily limited.

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Cattle suffered from disease in parts of North and South Arcot.

Cauvery.—There was little or no rain in this section.

Tanjore.—The Cauvery in Tanjore had almost dried up, and tanks held very moderate supplies. There was no fresh cultivation in *nunjah*, but some progress was being made in the cultivation of a few dry grains. *Samba Peshanam Rice* was harvested, and the out-turn reported to be generally good.

Trichinopoly.—The Cauvery and Coleroon were running low in Trichinopoly, and supplies in irrigating channels were maintained by the construction of temporary dams. The bulk of the *Samba Paddy* crops and the dry grains, *Dholl, Oolundoo, &c.*, were harvested with fair results. *Kodaikar* and *Gingelly* were under cultivation.

Prices fell.

Public health was good. There were very few cases of cholera.

Cattle enjoyed freedom from disease.

SOUTHERN SECTION.—No rains fell in this section.

Madura.—In Madura no freshes were received in the Vigay river, and *Cotton* and *Indigo* plants were affected by the absence of rains. *Nunjah* crops were harvested, and lands in some localities were being prepared for second-crop cultivation.

Tinnevelly.—In Tinnevelly, *Samai, Varagoe, Cholum, Oolundoo,* and *Gingelly-oil seed* were sown in dry, and *Brinjals* and *Onions* in garden lands. Standing crops were unhealthy, and the out-turn of harvested grains was below the average.

Prices declined

Cholera manifested itself in parts of Madura. In other respects the health of the districts was good.

WEST CENTRE.—No rain fell in Coimbatore and Salem. On the Neilgherries there was a slight fall.

Coimbatore.—In Coimbatore tanks and wells were drying up, and the store of water in river channels was diminishing. The *Manavary* crops dependent on the Noyel river were drooping; elsewhere the standing crops were thriving. *Raggy, Horse-gram, Samba, Cholum,* and *Tobacco* were harvested in parts of the district.

Neilgherries.—On the Neilgherries, *Wheat, Canjay,* and *Vendium* were reaped; and *Coffee* and *Plantains* were thriving.

Salem.—In Salem, *Cholum, Raggy,* and *Paddy* were cultivated with the aid of wells, and the standing crops were in good condition. *Paddy, Raggy, Horse-gram, &c.*, were harvested, but the out-turn was poor. *Cotton* and *Indigo*, the latter of which had been cultivated over a very limited extent of land, did not promise well. A large quantity of *Seed-Cotton* was notwithstanding picked in the Trichengode Taluk.

Prices rose on the Neilgherries, and were fluctuating in Salem.

Fever and cholera were prevalent in Coimbatore and Salem, but did not occasion any serious loss of human life. On the Neilgherries public health was good.

Cattle disease existed in parts of Salem and Coimbatore.

WEST.—The rainfall in South Canara was *nil*. In Malabar a few showers fell.

South Canara.—In South Canara the third-crop rice and dry grains were in good condition.

Malabar.—Preparations for further cultivation were being made in parts of Malabar.

Prices rose in South Canara, but remained stationary in Malabar.

Fever, small-pox, and cholera to a small extent affected public health in Malabar. In South Canara both men and cattle preserved good health.

Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the month of February 1870, *Fusly* 1279.

DISTRICTS.		PRICES OF GRAIN AND SEA SALT.												RAINFALL.				
		2nd sort rice.		2nd sort paddy.		Cholum.		Raggy.		Horse-gram.		Sea-salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly		Fusly		Fusly		Fusly		Fusly		Fusly						
		1278	1279	1278	1279	1278	1279	1278	1279	1278	1279	1278	1279					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam.........	285	247	118	100	183	145	166	120	174	150	289	322	...	...	...	...	...
	Vizagapatam..	332	285	147	110	202	153	205	159	183	142	254	308	...	...	...	...	...
	Godavery.......	275	235	126	103	150	131	145	113	169	182	241	276	...	...	...	...	...
	Kistna..........	362	317	165	142	161	185	148	138	201	236	277	319	...	...	...	...	...
	Nellore.......	377	343	178	159	173	155	136	140	208	290	262	340	...	0·30	0·04	...	0·08
Ceded Districts.	Cuddapah......	443	422	193	196	192	175	183	163	198	206	301	377	...	...	...	...	...
	Bellary.........	370	370	152	154	124	167	103	137	148	187	285	429	...	...	...	...	...
	Kurnool.........	406	410	184	174	167	175	171	153	211	251	324	356	...	...	...	...	...
East Centre.	Madras.........	485	361	199	154	240	256	254	232	270	264	267	296	0·76	...	0·10	0·46	0·31
	North Arcot..	387	312	168	130	216	170	196	167	179	173	241	297	...	...	...	...	...
	South Arcot..	410	278	188	128	219	123	232	150	220	207	268	325	...	0·20	...	...	0·5
Cauvery.	Tanjore.........	351	266	152	124	199	115	158	114	222	208	251	306	...	...	...	...	...
	Trichinopoly..	391	272	180	117	164	129	187	128	233	188	290	356	...	...	...	...	...
Southern Section.	Madura.........	356	349	168	162	148	148	150	134	155	181	291	358	...	...	...	...	...
	Tinnevelly.....	400	361	186	172	224	240	166	151	227	228	291	361	...	0·18	...	0·12	0·06
West Centre.	Coimbatore ...	451	374	213	185	255	228	216	163	230	165	335	384	...	...	...	...	...
	Neilgherries..,	533	583	...	...	213	320	320	291	320	218	457	457	...	...	5·91	·51	3·21
	Salem..........	369	315	165	139	196	165	193	150	198	153	307	345	...	...	...	...	...
West......	South Canara.	323	346	149	162	...	...	208	212	276	265	254	285	...	...	...	...	...
	Malabar........	384	380	180	175	...	...	171	176	268	262	288	337	...	·18	...	...	04·0

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Statement of Cotton and Indigo Cultivation with their Market Prices for the month of February 1870, *Fusly* 1279.

DISTRICTS.		Cotton. Fusly 1278. Extent.	Cotton. Fusly 1278. Assessment.	Cotton. Fusly 1279. Extent.	Cotton. Fusly 1279. Assessment.	Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo. Fusly 1278. Extent.	Indigo. Fusly 1278. Assessment.	Indigo. Fusly 1279. Extent.	Indigo. Fusly 1279. Assessment.	Market rate of Cake Indigo per Maund of 25 lbs.
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	6,405	11,645	7,189	15,484	151	30	30	30	30	65
2	Vizagapatam ...	14,897	37,979	13,121	26,915	149	4,202	24,058	1,670	8,446	48
3	Godavery ...	16,184	21,089	12,743	17,232	168	728	1,321	1,652	5,601	70
4	Kistna ...	1,76,680	2,54,524	2,43,098	3,45,698	155	9,401	18,419	21,879	46,447	60
5	Nellore ...	21,828	21,032	16,145	17,892	158	18,082	41,752	39,335	91,309	49
6	Cuddapah ...	661	855	3	7	120 to 166	239	833	3,776	9,195	40 to 70
7	Bellary ...	3,24,447	3,58,463	5,16,224	5,47,325	159	5,347	6,165	9,955	14,494	64
8	Kurnool ...	1,89,433	2,20,566	2,80,237	3,22,835	154	21,779	42,480	51,741	96,219	57
9	Madras ...	2	5	1	1	100	6,890	19,051	4,608	14,876	45
10	North Arcot ...	1,152	2,257	1,680	3,715	145	8,255	17,995	8,624	18,439	51
11	South Arcot ...	4,152	8,924	5,108	9,883	133	25,789	49,152	33,908	67,233	45
12	Tanjore ...	2,911	3,784	3,157	4,079	171	847	2,358	1,264	2,501	25
13	Trichinopoly ...	7,066	8,777	7,768	8,225	143	144	317	261	610	18
14	Madura ...	64,160	1,10,808	64,940	1,16,173	100	33	78	79	175	40
15	Tinnevelly ...	2,13,245	2,04,927	2,27,184	2,21,122	158	365	852	485	309	31
16	Coimbatore ...	1,12,414	1,17,779	1,20,663	1,28,514	146	......	......	......	......	30
17	Salem ...	12,076	17,870	14,532	20,711	206	933	3,655	1,418	6,291	41
	Total...	1,167,613	14,01,284	1,583,873	1,805,871	... ...	1,03,064	2,28,016	1,80,685	3,82,175	......

Revenue Board Office, (Signed) A. MACGREGOR,
Madras, 21*st March* 1870. *Secretary.*

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. V.

Standing No. 399-13.

Uncovenanted Servants applying for leave or pension in England to appear before Medical Board, India Office.

The Government of India have ruled* that Uncovenanted Servants who apply for pension or gratuity while on leave in England shall appear for examination before the Medical Board of the India Office, which sits every week.

* Resolution of Govt. of India, dated 11th January 1870, No. 174, communicated with Order of Madras Govt., dated 27th January 1870, No. 59.

2. Any application for superannuation allowance supported by a medical certificate other than from that Board will not be attended to.

No. VI.

Standing No. 404-12.

Arrangement of allowances in case of Uncovenanted Officers on privilege leave.

The Government of India have ruled* that Uncovenanted Officers whose salaries are not less than 100 Rupees per mensem shall draw acting allowance while on privilege leave, and that in cases where a substitute has been appointed both the substitute and the absentee shall draw acting allowance for the same period.

* Letter from the Under Secretary to Govt., of India, to Accountant-General, Bombay, dated 11th December 1869, No. 3,105. Communicated with Order of Madras Government, dated 4th February 1870, No. 16.

2. As the spirit of the leave rules is applicable to Uncovenanted Officers on salaries of less than Rupees 100 per mensem, the claims of such officers to acting allowance during absence on privilege leave should be decided upon in each case by the authority granting the leave, subject to any orders that may be issued by the local Government, to prevent any abuse of the privilege.

3. It should be observed that Standing Order, No. 404-10 is still in force, and applies to these cases.

No. VII.

Standing No. 370-3.

Collector not to interfere with decision of Subordinate under Section 76, *Act VIII of* 1865.

The High Court have ruled in Special Appeal, No. 209 of 1869, that Section 76, Act VIII of 1865 (Madras) prohibits the interference of a Collector, with any decision of a subordinate under that Act.

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MISCELLANEOUS.

FISCAL SCIENCE IN INDIA—AS ILLUSTRATED BY THE INCOME TAX.*

Although the subject which I have chosen for my lecture this evening is somewhat dry, I am not without hope that I shall succeed in interesting you therein. It is "Fiscal Science"—that is, the science of raising revenue. "Fiscal Science" in India—as illustrated by the Income Tax. I am not going to bore you with a scientific exposition of the subject, but to try if I cannot make you understand the injustice of the tax which has been devised to meet the so-much-talked-of *deficit*. It is not to make you disloyal or disaffected that I address myself to this task, but because the public welfare requires the spread of an intelligent conviction upon the subject throughout the country; and in the popular exposition of it, which I am about to make, I shall address myself through you to the whole public of India. The history of our financial administration in this country from the first is a record of mistakes, attributable in the first place to want of insight on the part of our statesmen into the circumstances of the country, and, in the second, to the want of a vigorous hold upon true fiscal principles. I will not weary you with a record of the errors that have been made, but some of them will be noticed incidentally as I get further on. I think I am more likely to secure the object I have in view by shewing you as clearly as I can the condition of things with which the Indian financier has to deal, and the fiscal course which such a condition suggests and requires.

As to the condition of things, then, with which our Finance Minister has to deal—the condition of things under which he has to raise £50,000,000 sterling a year, to meet the expenses of the State—I remark *first*, that it is totally dissimilar to the condition of things under which the Chancellor of the Exchequer has to raise £70,000,000 at home. Obvious as this is to the most careless observer, and universally admitted as it is, half the errors we have made as administrators of Indian finance have arisen from its practical oversight. Nine out of every ten Englishmen come to India full of the belief that English institutions, English modes of taxation, English laws, English manners, and English customs are so excellent that the sooner all other people adopt them the better. Now, English modes of taxation are about as applicable to the condition of things here as English houses. Look at this fact:—The poorest Englishman, as you know, must have tea from China, coffee from Brazil, sugar from Bengal, tobacco from America, wool from Australia, cotton from India, spices from Africa, spirits from France or Holland or from our own distilleries, and a plentiful supply of beer from the brewery. In technical language, the Englishman's "standard of living," his expenditure, is very high. On the other hand, the standard of living in this country—the expenditure of the people—is exceptionally low. The tastes of the people are exceedingly simple, while everything they consume is grown at their own door. The only articles of general consumption that pass through the Indian Custom-house, or are ever likely to pass through it, are piece-goods and metals. The total gross revenue we are deriving at this moment from the vast network of Customs' machinery, which stretches along our coast of 3,500 miles, is consequently less than £2,500,000! And, we shall never get much more. Custom-houses in India are but a wretched imitation of the fiscal system which has grown up in Europe under a condition of things totally different from what prevails here, or ever can prevail here. They find no difficulty at home in raising a vast revenue with great ease through the Custom-house. But why? Because through their Custom-house lies the highway of half a dozen products of the world's industry that are consumed by every man, woman, and child in the country. Thus they get a very large revenue (£3,000,000) from a small duty upon tea, because every one drinks tea; from coffee, because every one drinks coffee; from sugar, (£6,000,000,) because every one uses sugar; and so on. *A tax never draws well till it reaches the masses.* And because of this, the *only* important article in our Customs' list in India is piece-goods, which every man, woman, and child in the country uses.

We can never hope to get a revenue of any moment from customs. It is because of this that I have insisted so earnestly for these ten years past upon the danger of tampering with the one, great, inexhaustible source of revenue we do possess in India—*the land!* Gentlemen in Calcutta tell us that if we will permanently settle the land tax the people will show a power of consuming dutiable articles that will make us independent of the land tax. Well, I ask *what* dutiable articles? Is it to be tea they are going to consume, or sugar, or coffee? Why, you know they are all grown at their doors. Is it to be spirits? The 40,000,000 of Mussulmans *cannot*, and the masses of the Hindoos *will* not, touch them, and I hope never will. My quarrel with the men who are tampering with our land revenue is this, that, while they cannot point out a single article of any kind from which there is even a remote prospect of our getting revenue in India through the Custom-house, they would have us be content with their mere general assurances that we need have no fear upon the subject. India is a purely agricultural country, a country of peasant farmers and petty shop-keepers. Her vocation is to till the land, to produce food and the raw material of clothing for other lands as well as for herself. England, on the other hand, is a rich manufacuring country, a country of great landlords, merchants, manufacturers, bankers, lawyers, men of science, wealthy farmers, rich tradesmen, comfortable middle classes, and high-wage earning workmen,resting upon a sub-stratum of several millions of labourers and the very poor. In India we have a very small class of wealthy traders and bankers at our great commercial emporiums, an immense body of petty shop-keepers and artizans in the towns and villages, and then a vast agricultural community of small peasant proprietors and labourers, a people of the simplest wants, and the richest of whom find their highest pleasure in hoarding their wealth in silver, or covering the persons of their household with barbaric gold and pearl.

While, therefore, in the one country it is the

* Lecture delivered in the Town Hall, Bombay, before the Mechanics' Institute, on Monday, the 28th February. By R. Knight, F. S. S.

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easiest thing in the world to raise a large revenue by taxes upon the *expenditure* of the people, that is, upon commodities, in the other it is next to impossible to raise a revenue in such a way at all. You cannot tax the *expenditure* of a people who spend nothing but upon the necessaries of life and jewellery. If taxes are to be levied in India at all upon commodities, they must be levied on necessaries, for there is nothing else to levy them upon. Well, we levy a somewhat heavy tax on salt and another upon spirituous liquors; but, as the masses of the people do not touch alcohol, our spirit tax (Abkarry as we call it) produces comparatively little. You see, then, how absurd it is for our financiers to dream of getting a large revenue in India from taxes upon commodities, unless they are necessaries of life. For no tax ever becomes productive till it reaches the masses. It is of no use to tax commodities that are consumed only by a few wealthy natives who have acquired European tastes and habits, because such taxes produce nothing, let them be as heavy as they may. A tax never draws well till it touches something that everybody consumes, and then a very small tax will yield a very large income. Thus, we might obtain an immense revenue from a tax of one rupee only per candy upon corn if it were possible to levy it. The quantity of grain consumed yearly by each one of us upon the average is about a Bombay candy of five hundred weight, and, as we are one hundred and thirty millions in number, a tax of one rupee per candy would plainly yield £13,000,000 sterling a year. On the other hand, you may put as heavy a duty as you please upon champagne; but, as it is only the English in India and a few wealthy natives who drink it, the tax will yield nothing. Indirect taxes in this country are, therefore, impossible, unless we are to tax necessaries of life, while at home they are the very mainstay of English finance. Out of a total revenue of £70,000,000 a year, the Custom-house and the Excise Office yield between them £42,000,000, while the Post Office, the Stamp Office, and the assessed taxes, all representing to a large extent *indirect* taxation, yield £15,000,000 more.—£57,000,000 out of £70,000,000.

But if the condition of things here forbids the hope of our obtaining a large revenue in such modes, still more clearly does it shew the hopelessness of such taxes as an income tax, belonging to the other great division of taxation commonly called *direct* taxation. Out of the £70,000,000 sterling of revenue raised in England, the highest amount ever obtained there within the last fifty years even in time of war, from the Income and Property tax, was the £16,000,000 sterling raised in 1856 to meet the expenses of the Crimean war. But now mark the condition of things under which taxation by the direct method is levied in England. In England, then, to begin with, the ownership of the land has passed from the State into the hands of private persons. The result is that we have a small class of enormously wealthy families living in graceful idleness upon the rental of the soil. The net value of the property belonging to the private landlords of the United Kingdom is estimated at £2,000,000,000 sterling. In the next place, we have what is called the monied class, the mortgagees, fund-holders, and railway proprietors of the kingdom, the net capitalized value of whose property is estimated at £2,700,000,000. And in the third place we have the merchants, bankers, traders, and wealthy farmers of the kingdom, possessed of an estimated capital of £1,300,000,000 sterling. The total value of the real and personal property of the United Kingdom is the vast sum of £6,000,000,000 sterling. This estimate is based upon the income tax returns, and is, therefore, considerably below the real amount. And this vast property is held in comparatively few hands. There is, first, the small class of landlords whose ancestors in the remote past obtained upon one pretext or other from the Crown a right of ownership in all the lands of the country. The class cannot be hidden; but stands out prominently, challenging attention as legitimate subjects of direct taxation. They have got possession in some way or other of the land of the country, and are holding by no title, when searched to the bottom, but that of prescriptive right. There is, in the next place, the monied class, standing as prominently before us in the cities as the landlords in the counties, challenging also equally with them the attention of the tax-gatherer. And lastly we have the great body of merchants, capitalists, farmers, and wealthy tradesmen of the country, all men of mark in their neighbourhood, living in a certain style, and concerning whose means every one is able to make a satisfactory estimate upon the whole.

Now, when we turn to India, how different is the field. If there is one part of India, gentlemen, in which it is of great importance that an income tax should be levied with success, it is Bengal. For we cannot reach the masses of that province through the Custom-house any more than the masses in other parts of the empire, while we have unfortunately abandoned to its zemindars, after the English example, the land revenue which the State was bound to retain in its own hands. There is nothing left for us, therefore, in Bengal, but the attempt to obtain, by a direct tax of some kind or other, the revenue which we have sacrificed by the land settlement. If there is any province of the country in which we might hope that such a tax would be successful, it would be Bengal with its landed proprietors, its rich and varied productions, and its vast commerce. Well, we have twice essayed the experiment within the last ten years—and what are the results? The tax is a deplorable failure. When we look closely into the condition of the people, it is easy to see why the tax is a failure. Throughout the whole province, with its 40,000,000 of people, the general poverty is such that only 21,000 incomes were returned at above £100 a year to Mr. Wilson's Income tax, and only 64,000 at more than £50 a year. Under the present Certificate Tax, which goes down to incomes of £50, the total number of assessees during the last year was less than 73,000, of whom only 44 (and 35 of them were Europeans) were assessed upon incomes of £1,250 a year and upwards. How hopeless is the levy of such a tax under such circumstances? The returns for all India, with its 130,000,000 of people, under Mr. Wilson's income tax were—

53,000	incomes	of	£100 and upwards
141,500	do.	of	£50 to £100
and 500,000	do.	of	£20 to £50

The great supporter of the tax in the Indian Press has ever been the *Friend of India*; but even that journal, while still contending that the tax

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should be retained, admits that "the fact seems established that no direct income tax should touch incomes below Rupees 1,000 a year." The staunchest advocate of the tax would thus have us confine its application to some 50,000 persons out of a population of 130,000,000, while to reach even this small class we must go as low as incomes of £100 a year. The *Friend* is a poor authority at the best, and in making this recommendation has quite forgotten the axiom that "direct taxation founded on extensive exemptions is only another phrase for confiscation." The proposal is simply that the 130,000,000 should force 50,000 of their number to build railways and make roads for all. For only 53,000 persons in all India were returned under Mr. Wilson's tax as possessing incomes of more than £100 a year. Turn to the United Kingdom from which this device was borrowed, and see how it applies there. Out of its small population, then, of 30,000,000—only one-fourth or fifth of our number—we have

995,688	persons with incomes		of £100 to £300
173,036	do.	do.	of 300 to 1,000
47,228	do.	do.	of 1,000 to 5,000
8,048	do.	do.	of 5,000 to £400,000
1,224,000			

Let me recal our own statistics once more for immediate comparison—

141,500	persons with incomes		of £50 to £100
53,000	do.	do.	of £100 and upwards.
194,500			

With figures like these staring us in the face, is it not amazing that this income tax notion should still be encouraged? It is wholly unsuited to the circumstances of the country, and is possible only upon the principle of exempting 999 persons out of every 1,000. And yet this is the tax to which Calcutta has been looking for years as the future backbone and mainstay of Indian finance when it has got rid of the land revenue. Were we to strike out of the schedules at home every man who is there thought rich enough to be assessed at all, we should still have in the residual incomes alone a field for the levy of the tax infinitely more promising than we have here. To begin with, there are 1,535,000 incomes derived from actual property averaging £55 a year each, which the income tax does not touch. Then, we have 1,345,000 artizans, earning £50 a year each, whose incomes also are untouched. Thus there are three millions of exempted incomes of £50 to £55 a year each against 194,000 assessable incomes in India, three-fourths of which range from £50 to £100 only. The 3,000,000 of exempted incomes at home if subjected to Mr. Wilson's tax would yield £5,600,000 a year, more than three times the amount which the tax yielded in India. Still below these exempted incomes at home there are nearly 10,000,000 of incomes derived from wages averaging £27 a year each. It is the fact that the incomes which we exempt at home as too low to be assessed at all offer a far richer field for the levy of the tax than the incomes of all India taken together. As a matter of fact the classes which at home pay the income tax have no existence here. We have individual men of such classes here and there at wide intervals, but the classes as classes have yet to be created. Thus in England we have upwards of 8,000 men with incomes of from £5,000 to £400,000 a year each. Throughout the whole of the North-West Provinces, with its 24,000,000 people, we have just 13 representatives of this class, the wealthiest of whom has not £40,000 a year. In England we have nearly 50,000 men with incomes of from £1,000 to 5,000 a year each; in the North-West Provinces, we have but 300 specimens of the class, of whom 23 are European officials. In England* we have a vast class of 174,000 men with incomes from £300 to £1,000. In the whole of the North-West Provinces there are not 2,000 men with such incomes. In England we have a million of men with incomes of £100 to £300 a year each; in the whole of the North-West Provinces there are not 7,000 of such incomes. In England, finally, we have nearly three millions of exempted incomes above £50 a year each, while in the whole of the North-West Provinces not 25,000. If the income tax at home went down as low as the certificate tax does here, it would reach more than 4,000,000 of persons possessing an aggregate income of £512,000,000 sterling a year. In the North-West Provinces it reaches just 34,294 persons with an aggregate income from twelve to fifteen millions sterling. In such circumstances an income tax is the greatest folly in the world. It cannot be productive, for it touches only one in a thousand of the people, while the fact that it reaches no more makes its injustice as patent as its folly. For direct taxes based upon the exemption of the many are simply confiscation, call them by what name you please. "Every man of authority upon financial subjects," says Mr. Gladstone, "agrees that the odious features of the income tax cannot by any means be removed or modified;" while in India the special objection lies against it, that it is necessarily founded on the exemption of 999 persons out of every 1,000, making it but another phrase for confiscation.

In these circumstances, gentlemen, the raising a revenue of £50,000,000 sterling a year, if we had nothing but taxes to depend upon, would be a task that might well dismay the most sanguine of statesmen. But the second peculiarity in our condition is that the commonwealth of India is not dependent upon taxes, as is the commonwealth of England, for the yearly expenses of the State. The commonwealth of India, instead of depending upon an income drawn from the Custom-house and the Excise Office, owns an enormously valuable property, which year by year returns it an income sufficient of itself, were it but properly looked after, to meet all the legitimate expenses of the State. The grand peculiarity of our condition, "that which distinguishes us from all the kingdoms of the western world," is this possession. And it is the tampering with this possession by Calcutta financiers that has been the chief subject of all my anxiety as a public writer for the last ten years. It is the tampering with this possession, this national property, that has necessitated the income tax, and this alone.

The Government of this country is entitled by immemorial usage to take a rental from the land,

* When the lecturer says "England" he must be understood to mean the United Kingdom.

or, what was known under our predecessors' rule, as the *khiraj*. This impost by Mahomedan law might extend to one-half the produce, but could not exceed that proportion; in practice, a third or a fourth only was taken. In other words, the commonwealth has an old prescriptive right to share in the produce of the soil; a share that might reach to one-half, but in practice seldom exceeded one-third, of the gross produce of the land. I hope you understand that this was the condition of things which we found in India. We found that the State had reserved to itself a right, from time immemorial, to a certain proportion of the produce of the land. The State had no right to the *soil*. It could not dispossess one tenant to put in another at a higher rental, for the soil belonged to the occupier, who could do with it what he liked, so long as he paid the State its share of the produce. When a ryot sold his land, he sold it subject to the State's claim upon it; in other words, he sold a right to enjoy for ever two-thirds of its produce. The remaining third was not his to sell, and never was his. Whether the State share represented the true rent of the soil or not, was an accident. I am inclined to believe that it fell short of that rent as a rule. Now, this was the condition of things we found here, and economists all agree that it is the happiest of all possible arrangements for a people to live under. But at this moment we have every where, except in Bombay perhaps, lowered this claim almost to the point of abandonment. The land has risen so greatly in value within the last five-and-twenty years that, instead of one-third, it is doubtful if we are taking upon the average one-thirtieth of the produce for the State share. We are virtually abandoning all claim to anything but a quit-rent of the soil throughout all India. We have abandoned to the cultivator that share in the produce which, before we came, was reserved for defraying the expenses of the Government. In so doing we have clearly conferred an enormously valuable property upon the cultivator, to which he had not the remotest title or right. The State has ceased to be the landlord, having abandoned to the cultivator the whole margin of profit which lies between our light assessment and the rental of the fields. Take the case of a ryot holding a thirty years' lease in the Central Provinces. The man has what is called a right of occupancy, and his "lease" is an assurance that the Government assessment shall not be raised for a generation of years. He can do what he likes with his land. His right is heritable, and transferable, and perpetual. The State cannot oust him, and all improvements upon the land are his for ever. He is simply liable at the end of thirty years to find the quit-rent he is paying somewhat increased from a general edict falling upon the whole taluka. Where he is now paying a quit-rent of 6 annas an acre he may perhaps have to pay by and bye 9 annas. He is the real landlord. Now, if we could get at the hoards of these men for the purpose of making the roads and canals which they have too little enterprize to make for themselves, it would plainly be good policy to tax them for the purpose; but to tax the *urban classes* for such works, who have no interest in the profits arising from the outlay, is simply monstrous. On this ground I have ever condemned the income tax in India, because it is levied to sustain a great public works expenditure. If we are to settle the land tax at its present rates, then must we cease *all* expenditure upon public works for improving that land. For all that we are now taking from the land is a quit-rent, the proceeds of which go to defray the expense of administering the laws. To undertake public works for improving the land, out of an income tax upon the cities, is simply preposterous.

We have already conferred upon the occupiers of the land an enormously valuable property, which belonged of right to all classes in common, urban as well as they. And we are now required to add to that value by an indefinite outlay upon railways, roads, canals, and I know not what else, for the improvement of land, our title to which is gone. And we are to do this out of a direct tax upon our incomes! To shew you to what an extent this sacrifice of State rights is being made, I have here with me the very latest report issued of a land settlement—the Raepore Settlement in the Central Provinces. We have in this Raepore report the latest illustration of what is going on, and I beg you to mark carefully what it reveals. First of all, then, Raepore is a land of plenty, where want is unknown, and the rainfall never fails. The district is the granary of the cotton-growing people of Nagpore; but is somewhat remote, and cheap communications, tramways, or canals are required to show the real wealth of its resources. The staple food of the people is rice, and their standard of living exceptionally high for this country. The very cattle find Raepore a sort of paradise. "The richer ryots feed their "plough-bullocks and bullocks during the hot "months, giving each animal from 2 to 3 seers of "oil cake or dhall daily and about 20 bundles of "grass, and the buffaloes continue to be fed "throughout the year." The total area of land under cultivation is 1,866,924 acres.

Now, the rental which the Commissioner proposes to levy upon this land for twenty years to come is Rupees 658,708, or about 5¼ annas per acre. You will ask, what is the value of the crops? Upon this point the report is exceedingly full and valuable. It gives as the acreage of each crop grown the average produce which each crop yields and the gross money-value of the whole harvest. I cannot give these returns in detail, but they shew that the total value of the crops is Rupees 1,62,22,163 a year. Thus the annual harvest and the annual assessment are—

Harvest..................	Rs. 1,62,22,163
Assessment...............	„ 6,58,708

In other words, we are going to commute all claim for rent and taxes for twenty years to come upon this wealthy people for a sum equivalent to about 1-27th of the value of the annual produce of the land. The assessment in point of fact is not one-fiftieth of the harvest. For, to be on the safe side of matters, they have computed the value of the staple crops throughout at a third or fourth of their real value. The single harvest gathered in Raepore in the last 12 months will suffice to pay the whole 20 years' assessment three times over. The value of the harvests I say of the last 12 months alone must have been three times that amount. There are no middlemen in Raepore to take the profit. The ryot gets it all. It is simply impossible to carry on the government upon such principles. How can we, with justice

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to the rest of the empire, commute the State demand for taxes for twenty years to come upon a wealthy people like this, on terms so preposterous? It is a manifest injustice to the rest of the empire to do so. It is an injustice to Raepore itself so to do. For the great want of Raepore is communications with Nagpore. A canal, or efficient tramway, between the two districts would double the value of the harvests at once, and it is simple insanity to deprive ourselves of the means of opening such communications.

The same ruinous settlements have been made throughout the whole of the Central Provinces, which comprise much of the richest soil of India. Their population is about 10,000,000 of people. The cultivated area is 12,400,000 acres with 2,500,000 acres of grazing land. The value of their crops is at least £25,000,000 sterling. Our public works expenditure therein (including railways) in the last eight years has been about £8,000,000, the interest alone upon which is about £400,000. In any other country of the world the rental of the land would be about £8,000,000, while Calcutta has done us the service to fix it for 30 years at £550,000 a year, or little more than the interest upon our public works expenditure therein since 1860.

The result is—as we can tax them in no other way—that these provinces will be a drag and drain upon the rest of the empire till the close of the century. In the North-West Provinces the same sacrifice is being made. The average assessment according to the last returns is but Rupees 1-10-1, or 3*s.* 3*d.* per acre, somewhat less than it was 30 years ago, when the average rate was Rupees 1-12-1, or 3*s.* 6*d.* per acre. Now this old North-West rate was fixed at a period of unprecedented agricultural depression, and was based upon the fact that the average price of wheat (the staple food of the people) during the ten years preceding the settlement had been 66 lbs. the rupee. The assessment was avowedly moderate—was intended to be moderate—and was paid with ease. During the 30 years that have since gone by we have given the provinces a vast system of irrigation, and have sent railways at enormous cost through the provinces. The amount spent on public works in the provinces is fabulous. Money, meanwhile, has fallen to half its old value, while the prices of produce—partly from this cause, and partly from the growth of a vast export trade—are three times what they were. Thus wheat has been for 12 months past 18 to 20 lbs. the rupee. The result of all this is that the cultivating classes have grown very wealthy. They have virtually been made, as you see, the owners of the soil, the State abandoning to them the rental which, before our time, was appropriated for the expenses of the administration. At this moment the old leases are falling in, and, were the new assessment based upon an enlightened regard for the altered condition of things in the country, we might double the rental throughout the provinces. The considerations I have pointed out make it as certain as any thing in human affairs can be that we might do this without the slightest oppression, and without interfering with the progress or well-being of the people in the least. And let me tell you what that means. It means an increase of £4,000,000 of revenue a year, about three times the produce of Mr. Wilson's general income tax when at its highest amount of 4 per cent.

Again, the modern land settlements of the Madras Presidency are being made for 30 years upon the assumption that the price of paddy is, and will remain, £2-0-7 per ton, whereas the real price for years past has been two or three times that rate. Now it is these proceedings which are the cause of all our embarrassment, and of the necessity of this new income tax. We are fixing the land revenue for long periods of time at these absurd rates, while committed to an indefinite outlay upon public works for improving the value of the land. Our finance is in the hands of men who are simply blind.

I do not think I should have chosen this subject for my lecture this evening but for the strange neglect of our publicists to deal with it. Until my own protest appeared against the measure,—in the shape of my letter to Earl Mayo, which has been so much cried out against, but which has done its work,—the press of India was meekly bowing its neck to the imposition of the yoke. I cannot but think that it should have acted very differently, and that public meetings should have been called in every city in the empire to protest against the tax; for I despair of seeing Indian finance administered upon broad and comprehensive views until the *Council Chamber* at Calcutta reflects the enlightened convictions of the public mind. The most important work which the Indian Press now can do is to spread exact information upon the subject; to educate the country in right views thereon. I have no sympathy with ignorant impatience, but still less with the ignorant *imposition*, of taxation. It is the duty of every citizen to resist such taxation with his whole might. For all taxes more or less interfere with, and embarrass, industry; and we are bound to hand down to the generations, which shall come after us in this country, unimpaired, the great inheritance to which we have ourselves succeeded—*the State rights in the soil.* I have shown you how largely these rights are being tampered with, and the injury inflicted upon the commonwealth thereby. Throughout Bengal, Behar, Orissa, and a part of the North-West and of Madras, the State inheritance is lost, and the sacrifice would have been universal, I believe, but for my own personal, persistent, and passionate efforts. For I have seen clearly that the surrender of the land revenue of the country now, or at any time, as the *London Times* said some years ago, will be "*the sacrifice of the one single opportunity left in the world of carrying out in practice the dream of the political economist in the maintenance of a community with entire justice and without waste. From the first hour, when the philosophy of administration has been understood, it has been admitted that the true source of State revenue is the land, and the only sound policy is to preserve the land as the property of the State.* The land is the one species of property which necessarily and perdurably increases in value by the mere growth of society, and which can, therefore, be charged with the support of the State, precluding all burdens upon individuals, and precisely adapting itself to the demands upon it. *The misfortune of all the western kingdoms of the world has been, that this discovery was not clearly made till the practical application of it had become impossible*, through the appropriation of the soil as private property; and when India

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"came into the hands of our fathers they found "themselves in possession of *the one opportunity* "*left in the world for carrying on government with-* "*out taxation, and without the necessity for ever* "*instituting taxes.*"

It cannot be too often repeated that we have but *one* source of revenue in India, and that it is the tampering of Calcutta officials therewith that produces all our embarrassments. We have but *one* source of revenue on which we can count with reasonable certainty to meet the heavy liabilities we are incurring in the prosecution of works of public improvement. Happily, that *one* source of revenue is not only sufficient for all the wants of the State; but, by consent of all authorities on economic science, it is the very best source of revenue a nation can possess. And yet against this one source of revenue, upon the preservation of which the future well-being of the country throughout all time depends; against this one source of revenue, to which neither social, nor economic, nor political objection of any kind exists, Calcutta financiers to a man have for years been arrayed. Before the mutiny they were the exponents of a financial policy the very opposite of this new one. *Then* not a freehold acre of land in the country was to be tolerated; *now* the land is to be everywhere settled at a quit-rent, and the right of the commonwealth to share in its improved value to be abandoned to the cultivator for ever. I am not misrepresenting these, gentlemen, in the least. Calcutta financiers, as a body, have shewn for the last ten years an incessant disposition to tamper with the land revenue, and cannot be made to see that *two* things go to make up a policy of public works expenditure by the commonwealth. If these works are to be constructed by the State, it can only be upon the understanding that the commonwealth is to share in the improved value of the soil. The problem which Calcutta has set itself is an impossible one, and,the attempt to solve it by an income tax involves a grievous wrong to the urban classes of the country. For you cannot settle the tax upon the land at the old rates while incurring enormous liabilities for increasing its value. What these Calcutta gentlemen are forcing us to do is to improve the land out of the proceeds of an income tax upon the cities, or the salt tax upon the labouring masses. Our rule has conferred upon the cultivating classes rights in the soil, unknown before our time, of immense value; and now to dream of undertaking public works for improving their land out of the mere quit-rent which we are receiving therefrom, and which is absorbed in the cost of our ordinary administration, is simply, I say, preposterous.

If the income tax is to be maintained in any shape whatever, it should be made to fall upon the classes for the improvement of whose property it is levied. My strongest objection to the income tax is, that it is levied for the advantage of certain classes who are already enjoying an annual bounty from the State. For, I repeat, again and again, that if we require an income tax at all, we require it not to defray the expenses of the administration of justice amongst us, nor for the interest upon our debt, nor for the maintenance of any part of the national establishments. We require it simply for the purpose of prosecuting public works; for the improvement of the land; or, what is the same thing, paying interest on the loans borrowed for that purpose. Throughout Bengal, Behar, Orissa, a part of the North-West Provinces, and Madras, as I have said, we have divested ourselves of all right whatever to share in the future value of the soil. By the Permanent Settlement conferred upon the landed classes of these provinces we have, in effect, said to them, "Although "entitled to take one-half the produce of your "land, we commute that right for all time into "a demand of one-twentieth only. Take the lands "as your own, and bless the Government which "confers upon you this splendid inheritance." So far all is intelligible. The State makes a transfer—which it has no right to make—of public property to a class that has no more equitable title to it than you or I have; and all other classes are required to acquiesce in the arrangement. Some persons foolishly profess to expect great political good from the transfer,—but is there one intelligent person in India who is prepared to pay an income tax, the proceeds of which are to be laid out in improvement of this property? Is it not enough that we are deprived of all right to share in its future value—that we are to be taxed to increase it? Absurd as the situation is, such is the exact position in which we stand towards this income tax. The zemindars of Bengal are in urgent want of roads; for, notwithstanding the innumerable water tracks which pervade the lower provinces, there is no part of India "where "communication by means of good roads or "navigable canals is so much wanted." Then again they want canals, for the soil there is "of "that nature that, as soon as the moisture is "evaporated, (which a few days after the waters "subside are sufficient to accomplish,) the face of "the earth becomes so indurated that it resembles "a surface of rock intersected by fissures, *its* "miniature ravines being such as no tender plant "can perforate." We have already constructed the East India Railway largely out of taxes for the benefit of these zemindars, whose lands it has immensely increased in value, and we are now to construct for these poor fellows a system of good roads throughout their lands, and a few hundred miles of navigable canals! If an income tax is wanted for the legitimate expenses of the State, we are ready to pay it; but let the zemindar make his own roads and canals, if you please.

I rejoice to see that, since the publication of my letter to Lord Mayo, there is a general awakening of the public mind to the necessity of preserving the land revenue of the country from being further tampered with. It was never, I believe, seen so clearly as now, how vitally important it is, while the State is committed to a policy of indefinite outlay upon the land, that we should retain the old prescriptive right to share in the improved value of its produce. The controversy which seemed all but hopeless seven years ago—so fully made up were men's minds at that period to the propriety of a Permanent Settlement—is now definitely closed. I look back sometimes with astonishment upon the prejudices with which this great question was formerly beset, and can hardly understand even now how the change of public opinion has been brought about.

'Tis the old history; Truth without a home,
Despised and slain; then rising from the tomb.

Seven years ago I stood quite alone of the

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Indian Press upon this subject. To-day I rejoice to say the permanent settlement has no longer a single advocate in the Indian Press. In protesting against it with all my might I have been moved simply by considerations for the public good, and my writings have been as opportune as important.

It is idle to complain that the wealthy trading classes of the country—comparatively few in number—contribute little or nothing towards the expenses of the State. They have grown wealthy by their own exertions, and are not indebted for their wealth—as are the agricultural classes—to the generosity of the State. The wealthy trading classes do contribute very little to the State, but the agricultural classes have had enormously valuable rights conferred upon *them*, to the disadvantage of the cities and the embarrassment of the empire. Every one who has studied Indian finance with candour by this time knows that our rule has everywhere conferred upon agriculturalists not merely exemption from taxation in common with other classes, but enormously valuable proprietary rights in the soil, which up to our time belonged to the commonwealth. The difference between the agricultural and urban classes is this, that, while both are comparatively exempt from taxation, our moderation in levying the land revenue has conferred immense wealth upon the former.

Long as I have detained you, I must not close this lecture without a word upon the great subject of decentralizing our administration of finance. The income tax is simply a fraud upon the people of Madras, Burmah, Bombay, and other provinces, which are already contributing more than their proper share to the imperial treasury, and are now required to pay this tax simply to make up a deficit which is brought about by official tampering with the land revenue in other provinces of the country. If Bombay has a better land system than Bengal, as every one knows it has, Bengal ought not to be allowed to rob the minor presidency of the advantages which arise therefrom. The local Governments of India should be allowed to manage their own finances as the State Governments of the United States do. The decentralization of Indian finance that is worth anything means decentralization of the same order as that which exists in the United States. The Imperial treasury at Washington receives certain taxes which fall with equal incidence upon the whole country, such as customs, and defrays the imperial charges of the debt, army, &c., out of them. The local administration of each State is left in its own hands. So should it be here. The Imperial Government of India should take all taxes that fall with equal weight upon the provinces, such as salt, customs, stamps, and defray the imperial charges therefrom. All other taxes—the land tax first of all—should be held to belong to the provinces in which they are raised. How is it possible with justice to frame a single budget that shall include provinces whose circumstances are so different as Bengal and this presidency? The Government here, fortunately for its people, has kept intact in its possession the grand inheritance which they have in the soil. In Bengal, the Government, by the impatient folly of Lord Cornwallis, has lost that inheritance. If Bombay, then, is not be placed under perpetual tribute to Bengal, we must have two distinct systems of finance for them. Their circumstances are radically different. A direct tax of some kind or other may be a necessity there; in Bombay it is simply a fraud.—*Indian Economist.*

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